

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1948

74-1948

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

B  
P/S

JOSEPH W. HALEY and HENRY WHITNEY,  
as Trustees of the International  
Association of Bridge, Structural  
and Ornamental Iron Workers,  
Local 417 Training and Education Fund,

Appellants,

-against-

ROBERT PALATNICK and JOSEPH ALBENDA,  
Trustees of the International  
Association of Bridge, Structural and  
Ornamental Iron Workers, Local 417  
Training and Education Fund,

-and-

WILLIS C. ROSE, individually,

Appellees.

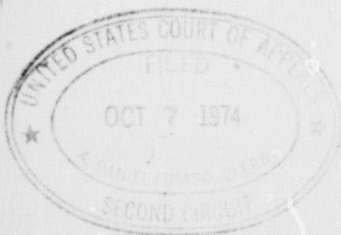
ON APPEAL FROM THE ORDER OF THE  
UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

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APPENDIX TO APPELLANTS' BRIEF

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JOHN R. HAROLD  
Attorney for Appellants  
150 Broadway  
New York, New York 10038  
(212) 964-2820



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**CIVIL DOCKET**  
**UNITED STATES DISTRICT COURT**

Jury demand date:

**JUDGE MAC MAHON**

D. C. Form No. 104 Rev.

T-3653

**4 CIV. 284**

**TITLE OF CASE**

**ATTORNEYS**

**JOSEPH W. HALEY & HENRY WHITNEY,**  
**as Trustees of the INTERNATIONAL**  
**ASSOCIATION OF BRIDGE, STRUCTURAL &**  
**ORNAMENTAL IRON WORKERS LOCAL 417,**  
**TRAINING & EDUCATION FUND**

**For plaintiff:**

**John R. Harold**  
**150 B'way, NYC 10038**      **Wo 4-2820**

**vs**

**ROBERT PLATNICK, Trustee of the**  
**INTERNATIONAL ASSOCIATION OF BRIDGE,**  
**STRUCTURAL & ORNAMENTAL IRON WORKERS**  
**LOCAL 417, TRAINING & EDUCATION FUND**  
**& JOSEPH ALBENDA & WILLIS C. ROSE,**  
**former Trustees of the INTERNATIONAL**  
**ASSOCIATION OF BRIDGE, STRUCTURAL &**  
**ORNAMENTAL IRON WORKERS LOCAL 417 &**  
**WILLIS C. ROSE, Individually**

**For defendant:**

**Granik Garson Silverman & Nowicki (deft. Ros**  
**120 North Main St., New City, NY 10956**  
**(914) 634-8822**

**John M. Donoghue (deft. Joseph Albenda)**  
**54 Market St., Poughkeepsie, NY, 12601**  
**(914) 454-1810**

**Guazzo Silagi & Craner (deft. Robert Palatnik,**  
**888 - 7th Ave., NYC 10019 - 757-7100**



**STATISTICAL RECORD**

**COSTS**

**DATE**

**NAME OR  
RECEIPT NO.**

**REC.**

**DISB.**

**J.S. 5 mailed**      **X**

**Clerk**

**1/6/74 R. Harold**  
**150 B'way U.S.T.**

**15-**

**15-**

**J.S. 6 mailed**

**Marshal**

**Basis of Action:**

**Docket fee**

**Declaratory Judgment Re**  
**Employment under Taft-**  
**Hartley Trust**

**Witness fees**

**Action arose at:**

**Depositions**

DATE	PROCEEDINGS	Date Ord Judgment
Jan. 16-74	Filed complaint & issued summons.	
Jan. 16-74	Filed order appointing Christopher P. Harold & Benedict D. Emanuele to serve summons & complaint.....Clerk	
Jan. 16-74	Filed pliffs affdvt & notice of motion to stay further proceedings in cases 73 Civ. 5480 & 5152. Ret. 1-25-74.	
Jan. 21-74	Filed affdvt. of service by an individual-served Joseph Albenda 1-21-74 (*)	
Jan. 21-74	Filed affdvt. of service by an individual-served Willis C. Rose - 1-18-74(*)	
Jan. 21-74	Filed affdvt. of service by an individual-served Robert Platnick-1-18-74 (*)	
Feb. 8-74	Filed ANSWER of deft. Willis C. Rose	GC
Mar. 6-74	(* Filed summons, should have filed Jan. 21-74 with affdvt. of services.	
Mar. 5-74	Filed ANSWER of deft. Joseph Albenda	JMD
Mar. 8-74	Before MacMahon, J.--Non-jury trial begun	
Mar. 11-74	Trial continued & concluded--Decision reserved	
Mar. 12-74	Filed ANSWER of Robert Palatnik, as Trustee	GC
Mar. 25-74	Filed memorandum of law (pliffs')	
Mar. 25-74	Filed pliff's proposed findings of fact & conclusions of law	
Mar. 3-74	Filed deft's (R. Platnick) proposed findings of fact & conclusions of law	
Mar. 8-74	Non-Jury Trial begun before MacMAHON, J.	
Mar. 11-74	Trial Cont'd and concluded. Dec. Res.	
May 22-74	Filed stip and order adjourning motion ret. 2-22-74 until 3-8-74. MacMAHON, J.	
Jun. 13-74	Filed MEMO-End. re motion to stay proceeding.. Motion denied. See Opinion of this date.....So Ordered, MAC MAHON, J. m/n	
Jun. 13-74	Filed defts affdvt of Mitchell B. Craner.	
Jun. 13-74	Filed affdvt of John R. Harold.	
Jun. 13-74	Filed pliffs memo of law re declaratory judgment, dated 3-4-74.	
Jun. 13-74	Filed deft (Willis C. Rose's) memo of law.	
Jun. 13-74	Filed transcript of March 8, 1974.	
Jun. 13-74	Filed OPINION 740809. Pliffs, trustees of Training & Education Fund seek a declaratory judgment, declaring void a contract of employment between the Fund & deft. Rose, as administrator. Pliffs also seek injunctive relief restraining defts "from effectuating such contract of employment or making any payment thereunder", (Labor Management Relations Act of 1947.) Since pliffs have failed to prove that defts have violated the Act, they are not entitled to the declaratory or injunctive relief regarding Rose's contract with the Fund, and the complaint is hereby dismissed....So Ordered, MAC MAHON, J.	
Jul. 2-74	Filed notice of appeal by plaintiffs Joseph W. Haley and Henry Whitney from final order dismissing the complaint seeking declaratory Judgment entered in this action on June 1 m/n to: Defendants' Willis C. Rose, Robert Palatnik and Joseph Albenda via their attor	



COMPLAINT IN ACTION  
FOR DECLARATORY JUDGMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- -x  
JOSEPH W. HALEY and HENRY WHITNEY,  
as Trustees of the INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL  
AND ORNAMENTAL IRON WORKERS LOCAL 417,  
TRAINING AND EDUCATION FUND,

Plaintiffs,

-against-

ROBERT PLATNICK, Trustee of the  
INTERNATIONAL ASSOCIATION OF BRIDGE,  
STRUCTURAL AND ORNAMENTAL IRON WORKERS  
LOCAL 417, TRAINING AND EDUCATION FUND  
and JOSEPH ALBENDA and WILLIS C. ROSE,  
former Trustees of the INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL  
AND ORNAMENTAL IRON WORKERS LOCAL 417,  
TRAINING AND EDUCATION FUND,

and

WILLIS C. ROSE, Individually,

Defendants.  
----- -x

ACTION  
FOR  
DECLARATORY  
JUDGMENT

74 Civ. 284

LFM

1. The instant action is for Declaratory Judgment pursuant to 28 U.S.C. 2201, in respect to rights, duties and responsibilities of Trustees and former Trustees of the International Association of Bridge, Structural and Ornamental Iron Workers Union, Local 417 Training and Education Fund, a Trust Fund created pursuant to 29 U.S.C. 186.

2. Jurisdiction is predicated on the fact that substantially more than \$10,000 is involved as to the matter actually sought to be reviewed and concerning which a Declaratory Judgment is sought, and because the relief sought is by reason of Federal statutes and rights and responsibilities thereunder and with respect to claimed violations of 29 U.S.C. 186.

3. That during May and June 1973 and for some time prior thereto, Richard Platnick, and Joseph Albenda were Employer Trustees and William Mims and Willis C. Rose were Union Trustees of the Training and Education Fund aforesaid, hereinafter referred to as the Fund.

4. That the Declaration of Trust is annexed hereto as Exhibit 1.

5. That said Fund is an apprentice Training and Education Fund. That approximately 15 apprentice members of the local Union enroll in the Training Fund Program each year for a three-year period or an approximate total enrollment of between 35 and 45 apprentices. That instruction classes are held four nights a week with three paid instructors, each teaching two nights a week. The school is open from September to April with vacation



periods during that time. That prior to the creation of the Fund, and since, there has been a Joint Apprentice Committee generally concerned with the selection of apprentices. Examinations as to competence are conducted by the instructors. That since the beginning of the Fund several years ago, the Joint Apprentice Committee has provided all administration that was necessary (which is minimal) and such administration has been and is currently being performed by such Joint Employer-Union Apprentice Committee.

R-2  
6. That prior to June 30, 1973 and for some time thereto Willis Rose was President (an elected non-salaried position) and William Mims, Business Agent (an elected salaried position) of the the local Union.

R-2  
7. That prior to May 4, 1973, Willis C. Rose was employed by the local Union as a salaried Assistant Business Agent, a position created and terminable by action of the local Union membership.

R-2  
8. That on May 4, 1973, the membership terminated the employment of Willis C. Rose as Assistant Business Agent.

9. That at the local Union Executive Board Meeting of May 4, 1973, subsequent to the termination of his services

*See P  
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4th line*

as Assistant Business Agent by the membership, Willis C. Rose then advised the Executive Board members in words or in substance that he would grab everything that there is, the language in context intended to mean and so understood that he would retaliate against his loss of employment as Assistant Business Agent and assure himself of other remuneration one way or another.

*R  
2nd line  
3rd line  
4th line*

10. That immediately subsequent to May 4, 1973, Willis C. Rose visited Richard O'Hara, Esq., an attorney in the law firm serving as General Counsel to the Fund and requested and required of him that a contract of employment be drawn up as Fund Administrator for a term of five years at foreman's salary with payment by the Fund for his coverage by the other Funds covering other employee members of the Union, generally for instance, the Pension and Welfare Fund and providing for Fifty Dollars (\$50.00) car expenses and Fifty Dollars (\$50.00) personal expenses allowance. A copy of such contract is annexed hereto as Exhibit B, except that modifications indicated by different type were made thereafter.

*P. A*

11. That a Union election for President and Union Business Agent and other local Union officers was scheduled for June 30, 1973.

12. That Willis C. Rose, the then incumbent was opposed for President by Joseph W. Haley and others; William Mims, the then incumbent Business Agent was opposed by Floyd Marks for Business Agent.

13. That Willis C. Rose stated after the drawing of the contract of employment and before its execution, that he, Rose, was holding the job as Administrator of the Fund in abeyance as security if he should lose the election for President.

14. That prior to May 29, the purported date of execution of the contract of employment and in order to induce the then Trustee, William Mims, to sign such contract, Willis C. Rose stated that if Mims would not sign the contract, he, Rose, as Chairman of the Fund would appoint another Trustee in his place and have him sign the contract.

15. That further and prior to the signing of said employment contract by William Mims, then a Trustee, the said Willis C. Rose threatened that if he, William Mims did not sign said contract, he, Rose, would run against him for Business Agent or campaign against him in the then scheduled election.



2-10  
16. That by reason of such threats, the said William Mims was induced to sign such contract of employment.

17. That at the June 1 meeting, the then candidate for President, Joseph Haley, requested that the Trustees should take no action of any kind until after the election then to be held on June 30, 1973.

18. That at the membership meeting of June 1, 1973, Willis C. Rose stated to the members that he had been offered employment as Fund Administrator but had not accepted such employment, although the contract is dated as executed on May 28, 1973 and marked thereon "accepted" by Willis C. Rose.

19. That prior to the execution of said contract of employment, Willis C. Rose stated to Employer Trustee, Joseph Albenda, that if he, Albenda, did not sign said contract, he, Rose, would run for Union office of Business Agent and as the paid Union officer responsible for the administration of the Union contract, that he, Willis C. Rose, would make it difficult for Joseph Albenda as an Employer working under and within the terms of the Union contract.

20. That the contract of employment of aforesaid was caused to be consummated by reason of fraud, duress and threats of Willis C. Rose.

21. That the purported date of employment of said Willis C. Rose as Fund Administrator under the contract aforesaid was July 2, 1973. That for the months of July, August, September and October, the said Willis C. Rose purported to render services to the Fund but in fact rendered no services and instead wasted the assets of the Fund. The apprentices were not visited or assisted in their training or development by said Willis C. Rose and the instructors were not aided or assisted in the administration of the Fund by the said Willis C. Rose for the months aforesaid.

22. That there was and is no need or proper justification for a Fund Administrator, the Fund having been generally well-functioning for several years prior to July 2, 1973 and such minimal administration as was required was rendered by the three instructors and the Joint Apprentices Committee..

23. That the contract of employment aforesaid was but a means of providing unnecessary employment and remuneration for a Union member and then Union official.

24. That the said Willis C. Rose on his own authority, acting alone, directed the preparation of the contract of employment.

25. That at the time, Willis C. Rose was himself a Trustee and Chairman of the Fund and therefore in such capacity as a Trustee and as Chairman acted to employ himself as an employee as a Fund Administrator.

26. That under the circumstances aforesaid mentioned, the said Willis C. Rose, as Trustee, violated his Trust responsibilities in acting, as a Trustee to employ himself as an employee of the Fund.

27. That for such aforesaid, the contract was but a means of, and if continued, would continue to be a means of using Employer contributions to the Union Welfare Fund as a disguised means of paying such money to a Union member and former official.

28. That such payments as aforesaid would be a fraud upon the Fund and its continuance would be a breach of the fiduciary relationship owed by the Fund Trustees to the beneficiaries of such Fund.

29. That no minutes of the Trustees acting to employ the said Willis C. Rose was ever taken by the Fund Trustees; that there was no meeting of the Trustees as



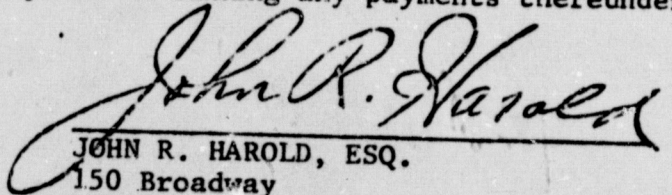
required by Article 7 of the Trust instrument nor any decision made by the Trustees in respect to the hiring of Willis C. Rose as a Fund Administrator in accordance with the manner for making decisions by Trustees as provided by Article 7 of the Trust instrument.

30. That no written notice of any purported action of the Trustees in respect to the purported hiring of the said Willis C. Rose as a Trustee was ever given to the Trustees as required by Article 7 of the Trust instrument.

31. That for the reasons aforesaid, the contract of employment was never properly authorized or ratified.

32. That all of the above would be a violation of the express provisions of 29 U.S.C. 186.

WHEREFORE, Judgment is sought declaring such contract of employment void and of no effect and in violation of law and restraining the Trustees from effectuating such contract of employment or making any payments thereunder.

  
JOHN R. HAROLD, ESQ.  
150 Broadway  
New York, New York 10038  
(212) WO-4-2820  
Special Counsel to Union Trustees  
of Local 417 Iron Workers Training  
and Education Fund.

TO: Granik, Garson, Silverman  
& Nowicki, Esqs.  
120 North Main Street  
New City, New York 10956  
(914) 634-8822



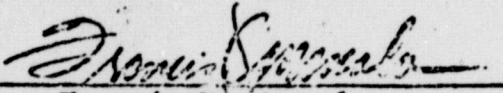
The undersigned, being all of the Trustees of "Iron Workers' Local No. 417 Apprenticeship Training Funds" presently in office and acting as such under an Agreement and Declaration of Trust dated as of September 8, 1967, by and between Iron Workers' Local 417 of the International Association of Bridge, Structural and Ornamental Iron Workers, Hudson Valley Construction Employers Association, Master Builders Association of Dutchess County, Inc., Catskill Mountain Contractors' Association, Inc. and Contractors and Suppliers Association of Rockland County, Inc., hereby amend Article VII, Section 1 of the said Agreement and Declaration of Trust so that as amended, it shall read as follows:


"Section 1. The Trustees in their collective capacity shall be known as Iron Workers' Local No. 417 Training and Education Fund and may conduct the business of the Trust in that name."

FURTHERMORE, the words "Iron Workers' Local No. 417 Apprenticeship Training Fund" appearing anywhere within the said Agreement and Declaration of Trust shall hereafter be construed as "Iron Workers Local No. 417 Training and Education Fund".

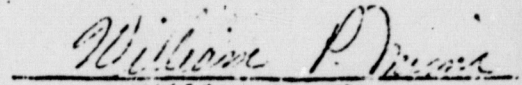
IN WITNESS WHEREOF, the parties hereto have executed  
this document on the 19th day of November, 1971,  
effective as of the 1st day of July, 1971.

EMPLOYER TRUSTEES

  
Francis X. Mascola

  
Rudolph Neuss

UNION TRUSTEES

  
William P. Mims

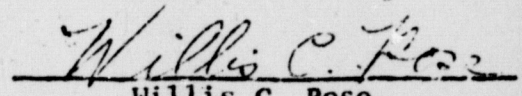
  
Willis C. Rose

EXHIBIT 1

LOCAL UNION NO. 417 APPRENTICESHIP  
AND TRAINING FUND  
AGREEMENT AND DECLARATION OF TRUST

THIS AGREEMENT AND DECLARATION OF TRUST made and entered into this 8<sup>th</sup> day of September, 1967, effective February 1, 1967, by and among LOCAL NO. 417, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS OF IRONWORKERS DISTRICT COUNCIL OF GREATER NEW YORK AND VICINITY (hereinafter called the "Union"), HUDSON VALLEY CONSTRUCTION EMPLOYERS ASSOCIATION, MASTER BUILDERS ASSOCIATION OF DUTCHESS COUNTY, INC., CATSKILL MOUNTAIN CONTRACTORS ASSOCIATION, INC. and CONTRACTORS AND SUPPLIERS ASSOCIATION OF ROCKLAND COUNTY, INC. (hereinafter called, collectively, the "Associations"), WILLIAM F. HEMS, WILLIS C. ROSE, RUDOLPH REUSS and FRANCIS K. MASCOLA as Trustees;

WHEREAS, the Union has executed collective bargaining agreements with the Associations and with other employers who are not members of the Associations (members of the Associations and all other employers who have or hereafter enter into collective bargaining agreements with the Union are hereinafter called "Employers"); and

EXHIBIT 1



WHEREAS, said collective bargaining agreements provide for the establishment of an Apprenticeship Training Fund financed by Employers' contributions of a fixed dollar amount once during the term of the now current Collective Bargaining Agreement; and

WHEREAS, the Union has designated William P. Mims and Willis C. Ross, as Trustees, and the Associations have designated Rudolph Neuss and Francis K. Mascola, as Trustees, and the said Trustees have signified their willingness to act in such capacity; and

WHEREAS, the parties hereto desire to enter into an agreement fixing their respective rights and duties with reference to a trust to be established and maintained to implement and carry out the pertinent provisions of the said collective bargaining agreements:

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises contained herein, the Trustees declare that they will hold all money or property received by them as Trustees, in TRUST FOR the uses and purposes hereinafter set forth, and the parties hereto declare and agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1. For purposes of this Agreement and Declaration of Trust the following words and phrases shall have the following meanings:

(a) "Collective Bargaining Agreements" means the collective bargaining agreements between Employers and the Union now or hereafter in effect and as hereinafter amended, supplemented or revised.

(b) "Agreement", "Trust Agreement" or "Trust Indenture" means this Agreement and Declaration of Trust as originally executed and as it may be amended from time to time.

(c) "Employers" means employers who are obligated to make payment to the Trust created by this Agreement by a Collective Bargaining Agreement with the Union.

(d) "Employees" means all persons covered by collective bargaining agreements between the Employers and the Union.

(e) "Standards of Apprenticeship and Training" means the Standards to be adopted by the Trustees, specifying the detailed basis upon which apprenticeships shall be handled and training provided.

(f) "Apprenticeship Training Fund" means all employer contributions and other money or property which comes into the hands of the Trustees, as Trustees hereunder.

(g) "Procedures" means the detailed plan or plans adopted by the Trustees to govern the operation of this Fund.

(h) "Contributions" means the contributions made or to be made by Employers to the Apprenticeship Training Fund pursuant to the Collective Bargaining Agreements.

(i) "Union Trustees" means the Trustees duly appointed by the Union and acting in that capacity.

(j) "Employer Trustees" means the Trustees duly appointed by the Associations and acting in that capacity.

(k) "Trustees" means the Employer Trustees and Union Trustees collectively.

## ARTICLE II

### ESTABLISHMENT OF APPRENTICESHIP TRAINING FUND

Section 1. A Trust to be known as Ironworkers Local No. 417 Apprenticeship Training Fund is hereby established.

Section 2. The purpose of this Trust is to provide training for apprentices pursuant to the Standards of Apprenticeship and Training adopted by the Trustees and to provide training



and skill advancement for journeymen and technological and industrial advancement for the Industry and to pay the expenses of establishing and administering this Fund, in accordance with the Agreement and Declaration of Trust.

### ARTICLE III

#### EMPLOYERS NOT MEMBERS OF THE ASSOCIATIONS

Section 1. Any employer who is not a member of any of the Associations but who is obligated by a signed Collective Bargaining Agreement with the Union (except for those Employers having a signed agreement with the International Union) to make contributions to the Apprenticeship Training Fund under the same terms and conditions as those contained in the Collective Bargaining Agreement between the Union and the Associations, shall become a party to this Trust Indenture by executing in writing and depositing with the Trustees its acceptance of the terms of this Agreement and Declaration of Trust. This acceptance must be in form approved by the Trustees and upon becoming a party to this Trust Indenture, such employer assumes all the obligations imposed by this Trust Indenture on the signers thereof, and is entitled to all rights accruing therefrom to the signers thereof, as if they had executed this Agreement on the date of their execution of their acceptance of its provisions.

## ARTICLE IV

### TRUSTEES

Section 1. The operation and administration of the Apprenticeship Training Fund shall be the joint responsibility of the Trustees, two of whom shall be appointed by the Associations and two of whom shall be appointed by the Union.

Section 2. The Trustees who are parties to this Agreement hereby consent to act as Trustees and upon the execution of this Agreement by all of the parties hereto are vested with all right, title and interest in and to the Apprenticeship Training Fund.

Section 3. Any Trustee may resign by filing with the remaining Trustees a written notice to that effect ten days in advance of the date on which the resignation is to take effect. Such resignation shall take effect on the date specified in the notice unless a successor Trustee shall have been designated at an earlier date, in which event such resignation shall take effect immediately upon the appointment of the successor Trustee.

Section 4. The Associations may terminate the designation of an Employer Trustee by filing with the Trustees a written notice to that effect signed by the President of the Association which had designated such Employer Trustee.



Section 5. The Union may terminate its designation of a Union Trustee by filing with the Trustees a written notice signed by the President of the Union.

Section 6. In the event of the termination of the designation of a Trustee or the resignation, death, disqualification, disability or refusal of any Trustee to act, or of a successor to any of them, a successor Trustee shall be designated by the party which designated his predecessor. In the case of an Employer Trustee such designation shall be evidenced by a notice to that effect signed by the President of the Association which had designated such Employer Trustee. In the case of a Union Trustee such designation shall be evidenced by a notice to that effect signed by the President of the Union.

Section 7. Any successor Trustee designated as hereinbefore provided, upon his acceptance in writing of the terms of this Agreement shall become vested with all of the rights and powers and assume all of the duties and obligations of a Trustee.

Section 8. No vacancy or vacancies in the office of Trustee shall impair the power of the remaining Trustees to administer the affairs of this Trust provided there are sufficient Trustees to constitute a quorum for the transaction of business as hereinafter provided.

ARTICLE V

POWERS OF THE TRUSTEES

Section 1. The Trustees shall have all the general and incidental powers necessary to the proper administration of the Standards of Apprenticeship and Training and this Trust. Included within such powers but not by way of limitation, shall be the power:

(a) To pay or provide for the payment of expenses of implementing the purposes of this Fund;

(b) To determine the number of apprentices to be initiated into the Apprenticeship Program, taking into consideration the need for apprentices in the locality, the available job facilities for acquiring the necessary experience and other relevant factors, provided that in all instances the Trustees in determining the number of new apprentices shall not exceed the ratio of apprentices to journeymen, as the same is provided for in the then current trade agreement between the Union and the Associations;

(c) To establish minimum standards of education and experience required of apprentices and to pass on the qualifications of apprentice applicants;

(d) To approve apprenticeship agreements and to submit these apprenticeship agreements for registration with the New York State Apprenticeship Council;

(e) To determine the quality and quantity of experience on the job which the apprentices must have and to be responsible for their obtaining it;

(f) To hear and adjust all complaints of violation of apprenticeship agreements;

(g) To arrange tests for determining the apprentice's progress in manipulative skills and technical knowledge;

(h) To maintain or cause to be maintained a record of each apprentice, showing his related and field schooling experience and progress in the learning of the trade;

(i) To make annual reports covering the work of the Trustees to the employer, the Union and the New York State Apprenticeship Council;

(j) To certify to the New York State Apprenticeship Council and International Headquarters of the Union the names of apprentices who have successfully completed their apprenticeship for issuance of Certificates of Completion;

(k) To be responsible for the successful operation of the apprenticeship standards of the trade in the locality by performing the duties listed above; by co-operating with public and private agencies which can be of assistance; by obtaining publicity in order to develop the support and interest of the public in apprenticeship; by keeping in constant touch with all parties concerned - apprentices, parents, employers and the Union;

(l) To arrange for, by contract or otherwise, classes of related instruction;

(m) To establish and operate either alone or in conjunction with governmental or other private bodies programs, including but not limited to upgrading or extending the skills of journeymen;

(n) To provide the greatest opportunities for the utilization of apprentices and journeymen in this industry by proper extension of jurisdictional competence and individual qualification;

(o) To make, amend, modify or repeal rules and regulations which they deem necessary or proper for the administration of the Apprenticeship Training Fund or carrying out the provisions of this Trust Agreement;

(p) To pay or provide for the payment of all reasonable and necessary expenses of collecting Employer contributions in proper amount and administering the affairs of this Trust and the Apprenticeship Training Fund, including but not by way of limitation, all expenses which



may be incurred in connection with the establishment of this Trust, the employment of administrative, legal, expert or clerical assistance, the purchase or lease of premises and the purchase or lease of materials, supplies and equipment;

(q) To accept, compromise, arbitrate or otherwise settle any obligation, liability or claim involving this Trust and to enforce or contest any obligation, liability or claim by appropriate legal proceedings but they shall not be obliged to do so unless in their judgment, it is in the interest of the Trust to do so;

(r) To delegate any of their ministerial powers to their agents or employees;

(s) To sell, exchange, lease, convey, or dispose of any property, whether real or personal, at any time forming a part of the Apprenticeship Training Fund upon such terms as they may deem proper and to execute and deliver any and all instruments of conveyance and transfer in connection therewith;

(t) To vote in person or by proxy upon securities held by them as Trustees and to exercise by attorney any other rights of whatsoever nature pertaining to securities or any other property at any time held by them hereunder;

(u) To exercise options, conversions, privileges or rights to subscribe for additional securities and to make payments therefor;

(v) To consent to or participate in dissolutions, reorganizations, consolidations, mergers, sales, leases, mortgages, transfers or other changes affecting securities held by them and in connection therewith, and to pay assessments, subscriptions or other charges;

(w) To keep property and securities registered in their names as Trustees or in the name of a nominee or nominees or in unregistered or bearer form;

(x) To keep property or securities in the custody of a bank or trust company;

(y) To borrow money in such amounts, and upon such terms and conditions as shall be deemed advisable by them or proper to carry out the purposes of the Apprenticeship Training Fund and to pledge any securities or other property for the repayment of any such loans;

(z) To pay out of the funds of the Apprenticeship Training Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Apprenticeship Training Fund or any money, property or securities forming a part thereof;

(aa) To invest and reinvest such funds as in their sole discretion are not required for current expenditures or reserves in such manner as they shall deem advisable, as though they were the absolute owners thereof and without being limited to the type of investments required by the laws of the State of New York for the investment of trust funds (except for the powers herein specifically granted), without liability for loss or depreciation or for want of diversification of such investments; and

(bb) To do all acts, whether or not expressly authorized herein, which they deem necessary or proper for the protection of the Apprenticeship Training Fund or for carrying out the purposes of this Agreement.

#### ARTICLE VI

##### DUTIES OF THE TRUSTEES

In addition to the duties imposed by the laws of the State of New York on trustees from which the Trustees have not been relieved by this Agreement and the duties imposed by other provisions of this Agreement, it shall be the duty of the Trustees:

(a) To collect all contributions due this Fund;

(b) To maintain suitable records of and for the administration of the Standards of Apprenticeship and



Training and this Trust. The Trustees may require of the Associations, any Employer or the Union, any reasonable information, data or documents they deem necessary for the proper administration of the Standards of Apprenticeship and Training or this Trust;

(c) To cause the books of account and records of the Trustees to be audited from time to time but at least once each year by a certified public accountant;

(d) To file, within ninety (90) days following the close of each calendar year or following the close of such other periods as may be determined by the Trustees, with the Associations and the Union a written report setting forth all investments, receipts and disbursements and other transactions effected by them during the period covered by the report. Upon the expiration of thirty (30) days from the date of filing such report, the Trustees shall be forever released and discharged from any liability or accountability to anyone with respect to the propriety of the acts or transactions shown in such report unless within thirty (30) days from the filing of said report, the Associations or the Union file with the Trustees written objections to any matter contained in the said report. Neither the Associations, the Union, nor any contributing Employer, nor any participating employee, nor any other person shall have the right to demand any further or different accounting by the Trustees. The foregoing provision, however, shall not preclude the Trustees from having their accounts judicially settled if they so desire, but such settlement of their accounts shall be at their own expense;

(e) To deposit all moneys received by them in such bank or banks as they may designate for that purpose and all checks, drafts, vouchers or other instruments for the withdrawal of funds from the Apprenticeship Training Fund shall be signed by one Union Trustee and one Employer Trustee.

## ARTICLE VII

### PROCEDURE OF TRUSTEES

Section 1. The Trustees in their collective capacity shall be known as "Ironworkers Local No. 417 Apprenticeship Training Fund" and may conduct the business of the Trust in that name.

Section 2. The Trustees shall select from among the Union Trustees a Co-Chairman, and from among the Employer Trustees a Co-Chairman.

Section 3. A Co-Chairman or any two Trustees may call a meeting of the Trustees at any time by giving at least five days' written notice of the time and place thereof to each Trustee. Meetings of the Trustees may also be held at any time without notice if all of the Trustees consent thereto in writing.

Section 4. A quorum for the transaction of business at any meeting of the Trustees shall consist of at least three Trustees.

Section 5. Decisions of the Trustees shall be made by a majority vote of those present, provided the said majority is comprised of at least one concurring vote by a Union Trustee and at least one concurring vote by an Employer Trustee. In the event of a deadlock among the Trustees the question shall be decided by a neutral person jointly designated by the Union Trustees and the Employer Trustees. In the event that the Trustees fail to agree on such designation within a period of three working days from the



date of the deadlock, then the Employer, or Union Trustees may petition the United States District Court for the Southern District of New York for the appointment of an impartial arbitrator who shall decide the issue upon which the Trustees are unable to agree and his decision shall be final and binding. The expense in connection with such an appointment and the compensation of the arbitrator shall be paid from the Apprenticeship Training Fund.

Section 6. The Trustees may act on any matter which may properly come before them without a meeting provided that such action is recorded in writing and signed by one Union and one Employer Trustee after written notice to all of the Trustees.

#### ARTICLE VIII

#### CONTRIBUTIONS

Section 1. The contributions by Employers shall be made in accordance with the Collective Bargaining Agreements and shall be paid to the Trustees at the intervals stated in the Collective Bargaining Agreement between the Associations and the Union. Nonpayment by an Employer of any required contribution shall not relieve any other Employer of its obligation to make contributions, and no Employer shall be liable in any respect by reason of the failure, neglect or refusal of any other



Employer to make its required contribution.

Section 2. The Trustees may compel and enforce payment of contributions in any manner which they may deem proper, including the requirement of bonding delinquent employees and any contributing Employer who does not have his principal place of business within the geographical jurisdiction of the Union in conformity with the Collective Bargaining Agreement and the Rules and Regulations of the Trustees. Where bonding is required, the Surety Company on the bond shall be satisfactory to the Trustees. Any delinquent employer who is not bondable shall furnish cash in lieu of bond, in such amount as the Trustees may determine. The aforesaid power of the Trustees shall be without limitation upon the Union's rights and privileges in this connection. If any Employee fails or refuses to make such payments and the Trustees elect to enforce such payments, there shall be added to the obligation of the said Employer reasonable attorney's fees in the sum of 20% of the indebtedness and all other expenses incurred by the Trustees in connection therewith.

Section 3. The Trustees may call upon the Employers and/or the Union to furnish to the Trustees such information and reports as they may require in the performance of their duties under this Agreement and Declaration of Trust and the Employers and/or Union shall furnish the same when so requested. The

Trustees or their representatives, duly authorized in writing, shall have the right to audit, examine and make copies of all or any part of the books and records of any Employer including but not limited to payroll books and records, cash books, ledgers, contracts, tax returns or reports, and any other book or record which the Trustees deem necessary or desirable in connection with the proper administration of this Trust.

Section 4. Any Employer who fails to comply with the audit or bonding requirements hereinabove set forth upon ten (10) calendar days' notice to obtain bond or submit to audit shall, at expiration of the aforesaid ten days, cease to be a contributing Employer and the Employees shall cease to be eligible to receive any benefits from the Apprenticeship Training Fund.

#### ARTICLE IX

#### MISCELLANEOUS

Section 1. No party dealing with the Trustees shall be obliged to see to the application of any funds or property of the Apprenticeship Training Fund or to see that the terms of this Trust Indenture or the Standards of Apprenticeship and Training have been complied with or to inquire as to the necessity or propriety of any act of the Trustees, and every instrument executed by the Trustees shall be conclusive evidence in favor of any person who relies upon it that:



(a) At the time of the delivery of the instrument this Trust Indenture is in full force and effect;

(b) The instrument was executed in accordance with the terms and conditions of this Trust Indenture;

(c) The Trustees were duly authorized and empowered to execute the instrument.

Section 2. Each Trustee may rely and act in good faith upon any paper or document believed by him to be genuine and believed by him to have been made, executed or delivered by the party purporting to have made, executed and delivered the same, and may rely and act upon the opinion of legal counsel in connection with the administration or execution of this Trust or the Standards of Apprenticeship and Training.

Section 3. The Apprenticeship Training Fund shall indemnify and save harmless the Trustees individually and collectively against any and all liability or expense of any kind arising out of their duties as Trustees, except such liability or expense which results from the Trustees' wilful misconduct.

Section 4. No person shall have any legal or equitable right or claim under the Standards of Apprenticeship and Training or against the Associations, the Union, any Employer or the Trustees unless the right is specifically provided in this Trust Indenture or in the Standards of Apprenticeship and Training as they may be amended from time to time or is conferred by affirmative action of the Trustees.



Section 5. This Trust is created and accepted in the State of New York and all questions pertaining to the validity and construction of this instrument and of the acts and transactions of the parties hereto shall be determined in accordance with the laws of the State of New York.

#### ARTICLE X

##### AMENDMENTS

Section 1. This Trust Indenture may be amended at any time by an instrument in writing duly executed by the Trustees, provided that no such amendment shall:

(a) Revest any part of the Apprenticeship Training Fund in any Employer;

(b) Divert any of the Apprenticeship Training Fund to any purpose other than set forth in this Trust Indenture; and

(c) Alter, change, modify or amend any provisions of the Collective Bargaining Agreement.

Section 2. The provisions of this Trust Indenture and the Standards of Apprenticeship and Training shall be and remain such as to constitute the Apprenticeship Training Fund an exempt Trust under the Internal Revenue Code. To this end the Trustees shall promptly amend this Trust Indenture and the Standards of Apprenticeship and Training so that the Apprenticeship Training Fund shall be and remain such exempt Trust.

Section 3. Any modification or amendment to this Trust Indenture or the Standards of Apprenticeship and Training may be made retroactive if necessary or appropriate to qualify or maintain the said Trust as exempt under the Internal Revenue Code, as now in effect or hereafter amended or adopted and the regulations issued thereunder.

#### ARTICLE XI

#### TERMINATION

Section 1. For the purpose of this section the Apprenticeship Training Fund shall be considered as terminated:

(a) When there is no longer in force an agreement between the Employers and the Union requiring contributions to this Apprenticeship Training Fund or the conditions of employment in the industry are other than those provided for in the last effective collective bargaining agreement; and

(b) At any time upon the unanimous vote of the Trustees with the consent of the Associations and the Union.

Section 2. In the event of such termination the Trustees shall continue to pay or provide for the payment of any and all liabilities of the Fund, and shall distribute and apply any remaining surplus in such manner as will in their opinion best effectuate the purposes of the Fund provided, however, that no part of the corpus or income of the Apprenticeship Training Fund shall be used for or diverted to purposes other than for the

exclusive benefit of the Employees, apprentices and journeymen  
of the industry, or for the payment of administration expenses  
of the Fund, and upon the disbursement of the entire Apprentices-  
ship Training Fund this Trust shall terminate.

IN WITNESS WHEREOF, the parties have executed this  
instrument to evidence their acceptance of the Trust created and  
their agreement to be bound thereby as of the first day of  
February, 1967.

EMPLOYER TRUSTEES

*Richard Weiss*  
Richard Weiss

*Francis X. Mancola*  
Francis X. Mancola

HUDSON VALLEY CONSTRUCTION  
EMPLOYERS ASSOCIATION

By \_\_\_\_\_

MASTER BUILDERS ASSOCIATION OF  
DUTCHESS COUNTY, INC.

By *James H. Miller*  
*Executive Secretary*

CATSKILL MOUNTAIN CONTRACTORS  
ASSOCIATION, INC.

By \_\_\_\_\_

CONTRACTORS AND SUPPLIERS ASSOCIATION  
OF ROCKLAND COUNTY, INC.

By *Francis X. Mancola*

UNION TRUSTEES

*William P. Ross*  
William P. Ross

*Willis C. Ross*  
Willis C. Ross

LOCAL NO. 417, INTERNATIONAL  
ASSOCIATION OF BRIDGE,  
STRUCTURAL AND ORNAMENTAL  
IRONWORKERS OF AMERICA  
DISTRICT COUNCIL OF  
GREATER NEW YORK AND  
VICINITY

By *William P. Ross*

ONLY COPY AVAILABLE



**AGREEMENT**

**between**

**IRON WORKERS' LOCAL NO. 417  
TRAINING AND EDUCATION FUND**

**and**

**WILLIS C. ROSE**

Made	May 29	, 1973
Effective	July 2	, 1973

**DORAN, COLLERAN, O'HARA, POLLIO & DUNNE, P.C.  
1401 FRANKLIN AVENUE  
GARDEN CITY, N. Y. 11530  
516 CH 8-5757**

**EXHIBIT 2**

AGREEMENT made the 29th day of May , 1973, effective the 2nd day of July , 1973, by and between IRON WORKERS' LOCAL NO. 417 TRAINING AND EDUCATION FUND (a trust fund created under the laws of the State of New York, hereinafter referred to as the "Training Fund") and WILLIS C. ROSE, residing at 98 Kings Highway, New City, New York (hereinafter referred to as the "Employee").

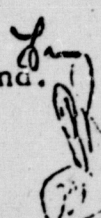
WHEREAS, the Training Fund desires to obtain the services of the Employee as Fund Co-Ordinator; and

WHEREAS, the Employee desires to be employed and render services in the management and direction of the Training Fund, and such other tasks assigned under the Training Fund's supervision and control,

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is mutually agreed as follows:


1. The Training Fund hereby agrees to, and hereby does, employ the Employee, and the Employee agrees to, and hereby does, accept employment from the Training Fund, as Fund Co-Ordinator.

2. The Employee is to direct and have charge of the administration of the Training Fund, under the general direction, supervision and control of the Training Fund.

3. It is mutually agreed that at no time is any authority conferred upon or vested in the Employee to contract for or in any way, directly or indirectly, to incur any obligation for or on behalf of the Training Fund while in charge or directing the administration of the Training Fund, without the express written consent of <sup>the Trustees</sup> ~~an officer~~ of the Training Fund. 

4. The Employee shall, during the term of this contract, devote his best efforts and principal attention to the business and affairs of the Training Fund. However, it is understood that from time to time the Employee may be called upon to perform certain functions and duties for and on behalf of Iron Workers Local Union No. 417 and this shall be permissible so long as it does not unreasonably interfere with his duties hereunder.

5. It is expressly understood and agreed that the services of the Employee are personal and unique. The Training Fund may terminate this agreement in the event that the Employee cannot perform hereunder by reason of mental or physical disability for a period of six (6) months. The Training Fund may also terminate this agreement in the event that the Employee is guilty of misfeasance or nonfeasance, or improper performance of duty.

6. This contract shall commence on the effective date hereinabove mentioned and shall continue for a period of five (5) years. However, in the event that the Collective Bargaining 



Agreements between the parties mentioned in paragraph 7. below should no longer provide for the existence of the Iron Workers' Local No. 417 Training and Education Fund, then this contract shall be deemed terminated within ninety, (90) days after the execution of said Collective Bargaining Agreements.

7. The Employee shall be compensated for his services at the rate of Foreman as fixed from time to time in the Collective Bargaining Agreement between Iron Workers Local Union No. 417 and the Allied Building Metal Industries, Inc. and in the Collective Bargaining Agreement between Iron Workers Local Union No. 417 and the Construction Employers of the Hudson Valley, Inc., Master Builders Association of Dutchess County, Inc. and Fabricators and Erectors Association. The Training Fund shall also make contributions to each of the fringe benefit funds mentioned in the above-indicated Collective Bargaining Agreements on the basis that is provided in said Agreements. Further, the Employee shall receive a weekly expense allowance of One Hundred Dollars (\$100.00). (\$50.00 car allowance, \$50.00 personal expense)

8. The Employee shall be reimbursed for all expenses paid by him which are incurred on behalf of the Training Fund and are necessary and proper in the performance of his duty. This shall include, but not be limited to, expenses incurred in the operation of an automobile. Expenses to be reimbursed shall be submitted in such form as provided by the Training Fund and shall

4  
be paid subject to its approval.

9. The Employee shall be entitled to an annual vacation of two (2) weeks.

10. This agreement may not be modified, waived or revoked except by a writing signed by the parties.

11. This agreement shall at the end of its term be deemed renewed for an additional one year term unless either party notifies the other in writing by registered mail at least thirty (30) days prior to the date of expiration of this agreement of his intent not to renew.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

IRON WORKERS' LOCAL NO. 417  
TRAINING AND EDUCATION FUND

By

William D. Miller

Union Trustee

Herbert A. Clark

Employer Trustee

J. H. Allen  
Employer Trustee

Accepted:

William C. Rose  
Employee

EXHIBIT 2

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X  
WILLIS C. ROSE, :

Plaintiff :

- against - :

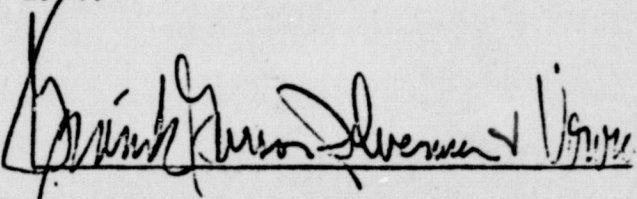
STIPULATION

IRON WORKERS LOCAL NO. 417, Training :  
and Education Fund; a Trust Fund :  
Created under the Laws of the State of :  
New York, Administered by JOSEPH W. :  
HALEY, HENRY WITNEY, ROBERT PLATNICK, :  
and JOSEPH ALBENDA, Trustees, :

Defendants :  
-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned that the time for the defendants to move or answer with respect to the complaint in this action is hereby extended to and including January 28, 1974.

Dated: December 14, 1973

  
GRANIK, GARSON, SILVERMAN & NOWICKI  
120 North Main Street  
New City, New York 10956  
Attorneys for Plaintiff

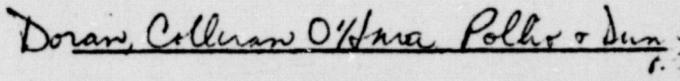
  
DORAN, COLLERAN, O'HARA, PCLLIO &  
DUNNE, P.C.  
1461 Franklin Avenue  
Garden City, New York 11530  
Attorneys for Defendants

EXHIBIT 2



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X  
WILLIS C. ROSE, :

Plaintiff :

- against - :

NOTICE OF APPEARANCE

IRON WORKERS LOCAL NO. 417, Training :  
and Education Fund; a Trust Fund :  
Created under the Laws of the State of :  
New York, Administered by JOSEPH W. :  
HALEY, HENRY WITNEY, ROBERT PLATNICK, :  
and JOSEPH ALLEDA, Trustees, :

Defendants :  
-----X

S I R S :

PLEASE TAKE NOTICE that the above-named defendants  
hereby appear in the within action and that the undersigned firm  
has been retained to represent the defendants in such action and  
demands that a copy of the complaint and all other papers be  
served upon the undersigned at the office and post office address  
listed below.

Dated: Garden City, New York  
December 14, 1973

Yours, etc.,

DORAN, COLLERAN, O'HARA, POLLIO  
& DUNNE, P. C.

1461 Franklin Avenue  
Garden City, New York 11530  
516 248-5757  
Attorneys for Defendants

To: Messrs. Granik, Garson, Silverman & Nowicki  
120 North Main Street  
New City, New York 10956  
Attorneys for Plaintiff

EXHIBIT 2  
41

ANSWER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSEPH W. HALEY and HENRY WHITNEY,  
As Trustees of the INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL  
AND ORNAMENTAL IRON WORKERS LOCAL 417,  
TRAINING AND EDUCATION FUND,

Plaintiffs,

ANSWER

-against-

Index No. 74 Civ. 284  
LHM

ROBERT PLATNICK, et al., and  
WILLIS C. ROSE, Individually,

Defendants.  
-----X

Defendant, WILLIS C. ROSE, by his attorneys, GRANIK,  
GARSON, SILVERMAN & NOWICKI, ESQS., answering the Complaint of  
the Plaintiffs, respectfully allege as follows:

1. Denies that this Defendant has sufficient knowledge or information to form a belief as to the present administration of the Trust Fund as alleged in Paragraph "5" of Plaintiffs' Complaint.
2. Denies each and every allegation contained in Paragraph designated "9" other than to admit termination of Defendant's services as an assistant business agent.
3. Admits so much of Paragraph "10" as alleges an agreement, copy of which is annexed to the Complaint, and denies each and every other allegation therein contained.
4. Denies each and every allegation contained in Paragraphs designated "13", "14", "15" and "16" of Plaintiffs' Complaint.

5. Denies that this Defendant has sufficient knowledge or information to form a belief as to the allegation in Paragraph designated "17".

6. Admits so much of Paragraph "18" as alleges a contract signed by this Defendant and the then trustees of said Fund and denies each and every other allegation therein contained.

7. Denies each and every allegation contained in Paragraphs designated "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "31" and "32".

AS AND FOR A FIRST, SEPARATE  
AND AFFIRMATIVE DEFENSE

8. This Court lacks jurisdiction over the subject matter of the within action on the grounds that there is no Federal question involved herein.

9. That the within action creates no issues pursuant to 28 U.S.C. 2201 and 29 U.S.C. 186.

WHEREFORE, Defendant, WILLIS C. ROSE, demands judgment dismissing the Complaint herein, together with the costs and disbursements of this action.

Dated: New City, New York  
February 5th, 1974

GRANIK, CARSON, SILVERMAN &  
NOWICKI, ESQS.

BY: \_\_\_\_\_  
Partner  
Attorneys for Def., Rose  
Office & P.O. Address  
120 North Main Street  
New City, New York 10956  
914-634-8822



TO:

JOHN R. HAROLD, ESQ.  
Special Counsel to Union Trustees  
of Local 417, Iron Workers Train-  
ing and Education Fund  
Office & P.O. Address  
150 Broadway  
New York, New York 10038

JOHN R. HAROLD, ESQ.  
150 BROADWAY  
NEW YORK, NEW YORK 10038

ANSWER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

JOSEPH W. HALEY and HENRY WHITNEY,  
as Trustees of the INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL  
AND ORNAMENTAL IRON WORKERS LOCAL 417,  
TRAINING AND EDUCATION FUND,

Plaintiffs,

ANSWER

-against-

ROBERT PLATNICK, Trustee of the  
INTERNATIONAL ASSOCIATION OF BRIDGE,  
STRUCTURAL AND ORNAMENTAL IRON WORKERS  
LOCAL 417, TRAINING AND EDUCATION FUND  
and JOSEPH ALBENDA and WILLIS C. ROSE,  
former Trustees of the INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL  
AND ORNAMENTAL IRON WORKERS LOCAL 417,  
TRAINING AND EDUCATION FUND,

74CIV.284

LPM

and

WILLIS C. ROSE, Individually,

Defendants.

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Joseph Albenda, by John M. Donoghue, his attorney,  
answers the Action for Declaratory Judgment filed in the  
instant matter as follows:

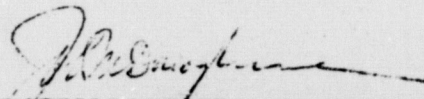
1. Denies knowledge and information sufficient to form  
a belief as to the allegations contained in Paragraphs  
"9", "10", "13" and "18".
2. Denies each and every allegation contained in  
Paragraphs "14", "15", "16", "19", "20", "21", "22", "23",  
"24", "25", "26", "27", "28", "29", "30", "31" and "32."

FOR AN AFFIRMATIVE DEFENSE

3. That arbitration in the instant matter has been ordered by the Court.

WHEREFORE, the action for Declaratory Judgment should be dismissed in its entirety.

2/27/74



JOHN M. DONOGHUE  
Attorney for Defendant  
Joseph Albenda  
54 Market Street  
Poughkeepsie, New York 12601  
Phone: 914-454-1810



ANSWER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSEPH W. HALEY and HENRY WHITNEY, :  
as Trustees of the INTERNATIONAL :  
ASSOCIATION OF BRIDGE, STRUCTURAL :  
AND ORNAMENTAL IRON WORKERS LOCAL :  
417, TRAINING AND EDUCATION FUND, :

Plaintiffs, :

-against- :

74 CIV. 284 LPM  
ANSWER

ROBERT PLATNICK, Trustee of the :  
INTERNATIONAL ASSOCIATION OF BRIDGE, :  
STRUCTURAL AND ORNAMENTAL IRON :  
WORKERS LOCAL 417, TRAINING AND :  
EDUCATION FUND and JOSEPH ALBENDA :  
and WILLIS C. ROSE, former Trustees :  
of the INTERNATIONAL ASSOCIATION OF :  
BRIDGE, STRUCTURAL AND ORNAMENTAL :  
IRON WORKERS LOCAL 417, TRAINING AND :  
EDUCATION FUND, :

and :

WILLIS C. ROSE, Individually, :

Defendants. :  
-----X

ROBERT PALATNIK, as Trustee, sued herein as ROBERT  
PLATNICK, as and for his Answer, by his attorneys, Guazzo,  
Silagi & Craner, P.C., alleges as follows:

1. Denies the allegations contained in Paragraphs of  
the complaint numbered "1", "2", "5", "20", "21", "22", "23",

D.R.I.  
"24", "25", "26", "27", "28", "29", "30", "31" and "32".

2. Denies sufficient knowledge or information as to form a belief as to the allegations contained in paragraphs of the complaint numbered "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18" and "19".

WHEREFORE, defendant ROBERT PALATNIK, demands that the complaint be dismissed, together with costs and disbursements of this action.

GUAZZO, SILAGI & CRAMER, P.C.  
Attorneys for Defendant  
ROBERT PALATNIK

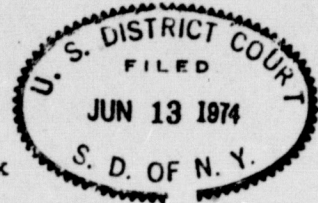
By

Michael D. Leary  
A Member of the Firm  
888 Seventh Avenue  
New York, N. Y. 10019  
(212) 757-7100

TO: JOHN R. HAROLD  
Attorney for Plaintiff  
150 Broadway  
New York, N. Y. 10038

OPINION AND ORDER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----x  
JOSEPH W. HALEY and HENRY WHITNEY,  
as Trustees of the INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL  
AND ORNAMENTAL IRON WORKERS LOCAL  
417, TRAINING AND EDUCATION FUND,

Plaintiffs,

-against-

ROBERT PLATNICK, Trustee of the  
INTERNATIONAL ASSOCIATION OF  
BRIDGE, STRUCTURAL AND ORNAMENTAL  
IRON WORKERS LOCAL 417, TRAINING  
AND EDUCATION FUND, et al.,

Defendants.  
-----x

:  
:  
: 74 Civ. 284-LFM  
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:  
:

OPINION

# 40709

APPEARANCES:

John E. Harold, New York City,  
for plaintiffs.

Granik, Garson, Silverman &  
Nowicki, New York City, for  
defendant Willis C. Rose;  
David W. Silverman, of  
counsel.

Guizzo, Silagi & Craner, P.C.,  
New York City, for defendant  
Robert Palatnik; Mitchel B.  
Craner, of counsel.

John Donoghue, New York City,  
for defendant Joseph Albenda.



MacMAHON, District Judge.

Plaintiffs, trustees of the Training and Education Fund (Fund) of the International Association of Bridge, Structural and Ornamental Iron Workers, Local 417 (Union), seek a declaratory judgment, under 28 U.S.C. § 2201, declaring void a contract of employment between the Fund and defendant Rose, as Fund administrator.<sup>1</sup> Plaintiffs also seek injunctive relief restraining defendants "from effectuating such contract of employment or making any payment thereunder." Jurisdiction is based upon the general federal question provisions of 28 U.S.C. § 1331(a) and § 302(e) of the Labor Management Relations Act of 1947, as amended,<sup>2</sup> 29 U.S.C. § 186(e).

This case came before us on our motion calendar and was immediately accelerated for trial on the merits. Evidence was presented by the parties on two trial days, beginning March 8 and ending March 11, 1974.

The Fund is an apprentice training and education trust fund, created pursuant to § 302(c)(6) of the Act, 29 U.S.C. § 186(c)(6). Since 1967, under collective bargaining agreements negotiated by the Union with various employer associations and individual employers,

contributions have been made to the Fund by the employers, based upon the number of hours they employ members of the Union.

On May 29, 1973, defendant Rose, who at that time was a Fund trustee and president of the Union, entered into an agreement with the Fund under which Rose was retained as the Fund's full-time administrator for five years.

Plaintiffs claim that Rose's contract of employment with the Fund violates § 302(a) and (b) of the Act because (1) Rose caused himself to be hired as Fund administrator, in violation of his fiduciary duty as trustee to the Fund's beneficiaries, (2) the contract was not approved in accordance with the provisions of the trust instrument establishing the trust, and (3) the payments made to Rose under the contract represent illegal payments of money by an employer to a representative of its employees.

The Act makes it unlawful for an employer or an association of employers to make payments to a union or other representative of its employees and for the representative to receive such payments under § 302(a)

and (b), 29 U.S.C. § 186(a) and (b).<sup>3</sup> Subsection (c)(6) of § 302 exempts from this prohibition payments made "to a trust fund established by such representative for the purpose of . . . defraying costs of apprenticeship or other training programs,"<sup>4</sup> if the Fund complies with certain statutory requirements. These requirements are as follows: (1) the basis upon which the employer will make payments to the Fund must be set forth in detail in a written agreement with the employer, (2) the employer and employees must be equally represented among the persons administering the Fund and the agreement must contain provisions to remedy any deadlocks among the trustees, (3) the written agreement must provide for an annual audit of the trust fund, and (4) the statement of the annual audit must be made available for inspection by interested persons at the principal office of the trust fund and at such other places as designated by the agreement.

The Fund was established as an employer-supported Fund in 1967, after execution of the collective bargaining agreements detailing the basis for employer contributions. There is no question that the Fund was established in accordance with the provisions of the Act.



The Union and employers are each represented by two of the four Fund trustees. Currently, the employer contribution to the Fund is four cents (4¢) per hour worked.<sup>5</sup>

Rose was, until July 1, 1973, the elected president of the Union, an office he had held since 1963. He also held the following appointive positions: assistant business agent, chairman of the Joint Apprenticeship Committee and trustee of the Training and Education Fund, Annuity Fund and Welfare and Pension Fund. In May 1973, Rose was removed as assistant business agent by vote of the Union's membership. Subsequently, at the June 30, 1973 membership meeting, Rose was defeated by plaintiff Haley in the election for Union president. Rose was not reappointed as trustee for any of the trust funds.

Plaintiffs claim that Rose, a bitter loser of a Union leadership fight, abused his position as president of the Union and trustee of the Fund to induce the other Fund trustees to consent to his being hired as Fund administrator at an exorbitant salary. The employer trustee defendants are alleged to have conspired with Rose to retain him as Fund administrator in order to benefit the faction in the Union power struggle they considered most favorable to management. This conduct violates the statute,

plaintiffs contend, because it breaches the fiduciary duty of Rose and the other trustees to the Fund beneficiaries<sup>6</sup> and is a scheme to divert trust funds to Rose, in violation of the Act which prohibits payments by an employer to an employee representative. Therefore, they argue, the contract is void as contrary to the language and policy of the statute. In addition, plaintiffs claim the contract is void because it was not approved by the trustees in accordance with the provisions of the trust instrument.

The complaint alleges no claim for relief under state law. Plaintiffs could have pleaded state claims for breach of fiduciary duty and failure to comply with the trust instrument, and we could have, in our discretion, exercised jurisdiction over those claims as pendent to plaintiffs' federal claim under the Act.<sup>7</sup> In fact, this would have been the better practice from the standpoint of efficiency and policy, because we would then be able to settle all the claims between the parties and determine questions of state law which are closely tied to the federal labor policy of Taft-Hartley.<sup>8</sup> Unfortunately, plaintiffs have not seen fit to join any of their state claims in this action or to amend their complaint to do

so, and, therefore, we must determine whether their claims can properly be brought under § 302 of the Act.

We note, at the outset, that we have subject matter jurisdiction because § 302(e) grants jurisdiction to the federal district courts to enjoin violations of § 302. And since 28 U.S.C. § 2201 confers upon a federal court "in a case of actual controversy within its jurisdiction" the power to "declare the rights and other legal relations of any interested party seeking such a declaration," plaintiffs will be entitled to a declaratory judgment and injunctive relief should they prove that defendants have violated the Act.<sup>9</sup> We have grave doubts, however, that the prohibitions of the Act extend to breaches of fiduciary duty by Fund trustees or to payments to Fund administrators which are not approved in accordance with the trust instrument. Claims of this nature are normally cognizable under state law and cannot properly be brought under § 302 and are, therefore, outside the scope of plaintiffs' complaint and our jurisdiction over this action.

In enacting § 302 of the Labor Management Relations Act of 1974, congress attempted to prevent corruption of the collective bargaining process by insulating



it from bribery by employers or extortion by union representatives. Congress was also concerned with possible abuse of trust funds if left solely under the control of union officials.<sup>10</sup> It was feared, for example, that the welfare fund of the United Mine Workers of America might "become merely a war chest for the particular union. . . ."<sup>11</sup> Congress sought to solve these problems by prohibiting all employer payments to trust funds unless they were jointly administered by union and employer trustees.

The original purpose of the Act is echoed in the House Report on the 1969 Amendments to § 302, which permitted employer-supported trust funds to be established for scholarships and child care centers:

"Section 302 of the Labor-Management Relations Act prohibits payments by employers of money or other thing of value to employee representatives. This broad prohibition was enacted to prevent bribery, extortion, shakedowns, and other corrupt practices, and to protect the beneficiaries of lawful employer-supported funds."<sup>12</sup>

Seizing upon the obvious congressional intention to protect the beneficiaries of trust funds, many plaintiffs have argued, sometimes with success,<sup>13</sup> that congress, in enacting § 302, meant to confer upon the

federal judiciary jurisdiction over the day-to-day administration of trust funds. Such plaintiffs have analogized § 302 to § 301(a) of the Act, under which the federal courts have created an extensive federal common<sup>14</sup> law governing collective bargaining agreements.

Most courts, however, have read § 302 as prohibiting only payments by an employer to union representatives, or to trust funds which do not comply with the structural requirements of subsection (c)(5)(B). These courts do not read § 302 to prohibit violations of fiduciary duties or standards of prudence in the ad-<sup>15</sup>ministration of the trust fund. Such claims are governed by state law and may be brought in the state courts, "just as similar alleged conduct by trustees of other trusts, however created, may be challenged and<sup>16</sup> reviewed."

The majority position regarding § 302's application to maladministration of trust funds is supported<sup>17</sup> by the views of most commentators,<sup>18</sup> the Justice Department, and the Subcommittee on Welfare and Pension Plans of the Senate Committee on Labor and Public Welfare. Thus, in its Final Report on Welfare and Pension Plans Investigation, the subcommittee concluded that

"there is no penalty /under § 302/ for abuses /of trust funds/ or maladministration." <sup>19</sup> A Justice Department official, testifying before the subcommittee, agreed:

"Section 302 of the Labor Management Relations Act, 1947 (29 U.S.C. 186) permits the establishment of welfare and pension funds, but does not provide any penalty for their maladministration. . . . /T/here is no requirement that the funds be efficiently managed, and no prohibition against exorbitant salaries and expenses -- against milking of a fund by its promoters. As long as the fund is established in accordance with the statutory language, there is no specific statute, which makes it a Federal offense for the managers of the trust to ransack or loot the trust corpus. . . .

No remedy is provided by section 302 for abuse of the trust purposes. Unless some other Federal statute is violated, abuses must be corrected in State courts either through actions brought by employees against the trustees for breach of their duties, or criminal prosecutions for embezzlement or misapplication." <sup>20</sup>

We think the weight of reason and authority support the view that § 302 is not a congressional mandate to the federal courts to create federal law governing the



administration of trust funds.<sup>21</sup> Therefore, we conclude, as has the majority of courts which has considered the issue, that § 302 of the Act does not prohibit breaches of fiduciary duty, diversion of trust funds, or similar allegations which relate solely to the maladministration of trust funds.<sup>22</sup> Thus, plaintiffs' claim that Rose violated his fiduciary duty to the trust beneficiaries fails to state a valid claim under the Act and we may not consider it.

Plaintiffs' second claim of invalidity, that the employment contract was not approved by the trustees in accordance with the terms of the trust instrument, also relates to the internal administration of the Fund, a matter governed by state law. Payments by the Fund to administrators, without proper trustee approval, do not violate § 302. The statute prohibits only payments made by an employer to a representative of its employees. Since plaintiffs rest their action solely on § 302 and not on any violations of state law, we may not consider this claim.

Plaintiffs' final theory of invalidity, however, does state a valid claim under § 302 of the Act. They contend that the payments made to Rose by the Fund

represent payments made by an employer to a union representative, a clear violation of the Act. The hiring of Rose as administrator, plaintiffs argue, was merely the means employed by defendants to make the illegal payment. This type of allegation clearly comes within the Act. The conduct charged goes beyond mere breach of fiduciary duty to a conscious attempt by both parties to evade the Act.

In Arroyo v. United States, 359 U.S. 419 (1959), the Supreme Court noted that a payment ostensibly made to a fund for the lawful purposes set forth in § 302 would violate the statute if both parties to the payment knew<sup>23</sup> it was a sham. This is essentially what plaintiffs contend happened here. We think that if the trustees have used the structure of the trust fund to make employer payments to Rose, the statute is violated, whether the payments are direct or indirect.<sup>24</sup> The congressional purpose of preventing bribery and extortion in the collective bargaining process will be thwarted if we hold that such payments are legal merely because the employer makes no direct payment to an employee representative. Congress and the Supreme Court did not intend the policy of § 302 to be evaded in this manner. We proceed, therefore, to

an examination of the evidence.

Until July 1, 1973, when Rose became administrator of the Fund, it was administered by the JAC teachers of the apprentice school and by Rose, as JAC chairman. Mr. Burchard, the JAC secretary, took attendance, filled out the various forms, and sent them to Rose. Between forty and forty-five students a year attended the school, which operated evenings five hours a week, from mid-September to mid-April, for a total of 144 hours a year. The school is regulated by both the federal government and the State of New York. The number of students, the training opportunities offered by the school and the complexity of the relevant regulations have all increased since the establishment of the Fund in 1967.

The Fund's income for fiscal year 1972<sup>25</sup> was \$60,170 and disbursements totalled \$15,492. In fiscal 1973, the income was \$34,406 and disbursements \$15,199. Gross Fund receipts for the first six months of fiscal 1974 (July 1, 1973 to December 31, 1973) were only \$12,796.68, indicating that total income for 1974 might be as low as \$25,000. This decrease in income is due to the recent drop in hours worked by Union members, which has led to a consequent decrease in employer



contributions to the Fund.

[ The Rose employment contract provides for payment to Rose of foreman's wages of \$365 per week, expenses of \$100 per week, and for contributions in his behalf to various Union funds of \$123.60, for a total of \$588.60 per week or \$30,607 per year. Thus, the compensation to be paid Rose in the first year of the contract <sup>was</sup> is likely to exceed Fund income for the same period.]

The subject of retaining a full-time administrator for the Fund had been discussed by Rose and predecessors of the defendant employer trustees as early as 1970. It was not necessary to hire an administrator at that time, however, because the Fund was not yet large enough to sustain one.

In March 1973, Rose discussed with Albenda, then an employer trustee, the appointment of a Fund administrator:

"He [Albenda] stated to me [Rose] that he felt or had heard rumors that Mr. Mims was going to have problems at election time and if we were short on money in the General Fund, that if one of us become administrator, we would still be in the field, could

check jobs and one thing or another, and relieve the General Fund of the expense of the second man, and I explained to Mr. Albenda at that time, I didn't think you could convince Mr. Mims that possibly he should move over and take that job or change in any way from what he was doing, and he even offered to have lunch with him and talk to him. I told him, 'I don't think it will go over.'"

At the May 4, 1973 membership meeting, Rose was removed as assistant business agent by vote of the membership. An executive board meeting followed the membership meeting, and afterwards, William Mims, Union business agent and a trustee of the Fund, asked Rose to stay behind a moment because Mims wanted to talk to him. Mims said to Rose, "We have been discussing any way we can get around this," apparently referring to Rose's loss of the assistant business agent job. <sup>26</sup> Mims suggested that Rose move into the Fund office the following Monday and assume the position of Fund administrator.

Mims testified that at this time Rose stated to him "if that is the way they want to play the game, that's the way we'll play it." Plaintiff Whitney heard Rose state his intention to "grab anything that was ready for the taking." Mims also testified that Rose said that if

he should lose the election for president, he would use the Fund administrator's position "as a back-up job."

A few days after the May 4 meeting, Rose visited the Fund's attorney, Mr. O'Hara, and O'Hara drew up a contract retaining Rose as Fund administrator. Rose and O'Hara discussed the contract's terms, including compensation, which Rose suggested should be foreman's wages. The document prepared by O'Hara as a result of this meeting was essentially the same as the contract signed by the trustees and Rose, with some modifications not important here.

Rose then brought the contract to Mims for his signature, but Mims was reluctant to sign. Although he thought an administrator should be appointed, Mims objected to the contents of the contract and thought:

"It should have been sent out to the members and any qualified person who thought they had the qualifications for the job should be sent out letters stating as such, regardless of who the trustees might have been.

Assuming I was going to be re-elected again, I think there would have been a problem on it, to be perfectly frank with you."



Rose told Mims that if he would not sign the contract, Rose, as chairman of the Fund and the JAC, would "appoint another trustee and have him sign it." Rose told Mims: "Look, I'll do what I can. I'll do what I have to do."

Rose then took the contract to Albenda, in Poughkeepsie, shortly afterwards. Albenda telephoned Mims to talk about the contract, expressing reservations about certain parts of it. Albenda asked Mims what he thought of the contract, and Mims replied: "well . . . look, it's going to come anyway. You're the people the employer trustees who proposed it." Albenda also remarked to Mims that "it looks like you've got trouble in the camp. You've got internal trouble!" Albenda told Mims not to worry, that he would straighten everything out.

Albenda told Mims that he was reluctant to sign the contract until certain modifications were made in the contract and certain internal problems in the local Union were solved.

Rose and Albenda discussed the changes Albenda wanted made in the contract during the course of several telephone conversations. The changes were made in

Albenda's office and Albenda then signed the contract. Mims and Palatnik (the other employer trustee) concurred in the changes and also signed the contract. The agreement is dated May 29, 1973.

Albenda explained to Mims that he signed the contract because he thought Mims was doing a fine job as business agent and did not want Mims to be defeated in the election for business agent.

The evidence clearly shows a conspiracy by Albenda, Rose, and perhaps others, to divert trust fund monies to Rose, as Fund administrator, an obvious breach of their fiduciary duty to the Fund. There is no evidence, however, which shows that Rose, Mims, Albenda or Palatnik attempted to use the structure of the Fund to disguise or facilitate direct or indirect employer payments to Rose. All payments of money to Rose, as administrator, were to be made out of Fund monies, and the evidence contains no suggestion that any payments were made by any employer to Rose at any time. Although it is true that the money Rose receives as Fund administrator was originally contributed to the Fund by employers, there is no indication that Rose's salary was paid out of money specially earmarked for that purpose, rather

than out of general Fund monies.

Thus, although plaintiffs have shown that defendants wrongfully sought to divert Fund monies to Rose, this conduct, as we have previously held, does not violate the statute, and plaintiffs have failed to demonstrate any conduct which does constitute such a violation. There was no evidence that the kind of bribery and extortion congress sought to prevent when it passed the Act was present here. The evidence does not show that Rose, the prime mover in acquiring the administrator's job for himself, made any threats or promises to either of the employer trustees to induce them to sign the contract, or that they demanded or expected anything in return for their signatures. The trustees' conduct constituted no more than a simple breach of their fiduciary duty to the Fund, conduct which does not come within § 302 of the Act and which presents an issue not now before us.

Since plaintiffs have failed to prove that defendants have violated the Act, they are not entitled to the declaratory or injunctive relief they seek regarding Rose's contract with the Fund, and the complaint

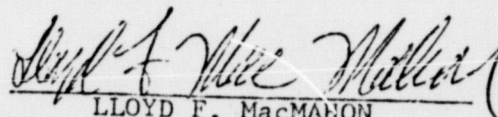


is hereby dismissed.

So ordered.

Dated: New York, N. Y.

June , 1974

  
LLOYD F. MacMAHON  
United States District Judge

FOOTNOTES

1     Rose has been joined as a defendant individually  
   and as a former trustee of the Fund.

2     Commonly known as the Taft-Hartley Act.

3     29 U.S.C. § 186(a) and (b) provide:

"(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value--

      (1) to any representative of any of his employees who are employed in an industry affecting commerce; or

      (2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

      (3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

      (4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to

any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(b) (1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

4

29 U.S.C. § 186(c)(6).

5

In the last collective bargaining agreement negotiated between the Union and the employers, the employer payment was reduced from 8¢ to 4¢ per hour. The remaining 4¢ was applied to the employees' wages because it was felt that the Fund had sufficient funds to carry it for several years.

6

There can be no doubt that the trustees of the Fund owe a fiduciary duty to the Fund beneficiaries. Lee v. Nesbitt, 453 F.2d 1309, 1311 (9th Cir. 1972).

7

Snider v. All State Adm'rs, Inc., 481 F.2d 337, 391-92 (5th Cir. 1973).

8

Snider v. All State Adm'rs, Inc., supra, 481 F.2d at 391-92.

9

28 U.S.C. § 2201; Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950).

10

Arroyo v. United States, 359 U.S. 419 (1959); 2 Legislative History of the Labor Management Relations Act 1305 (1947).

The section was added to the bill as an amendment in the Senate and was accepted by the Conference Committee. See, Arroyo v. United States, supra, 359 U.S. at 425 n. 6.



- 11        2 Legislative History of the Labor Management Relations Act 1309; Lewis v. Seanor Coal Co., 382 F.2d 437, 442 (3d Cir. 1967).
- 12        H.R. Rep. No. 91-286, 91st Cong., 1st Sess., U.S. Code Cong. & Adm. News (1969), pp. 1159-60.
- 13        See, e.g., Raymond v. Hoffmann, 284 F. Supp. 596, 602 (E.D. Pa. 1966); In re Bricklayers' Local 1 of Pa. Welfare Fund, 159 F. Supp. 37 (E.D. Pa. 1958).
- 14        See, Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U.S. 448 (1957).
- 15        E.g., Bowers v. Ulpiano Casal, Inc., 393 F.2d 421, 424 (1st Cir. 1968).
- 16        Insley v. Joyce, 330 F. Supp. 1228, 1234 (N.D. Ill. 1971).
- 17        Note, 72 Harv. L. Rev. 778, 780 (1959); Note, Protection of Beneficiaries under Employee Benefit Plans, Wash. U. L. Q. 112, 126-29 (1955):
- "Section 302(c)(5) in itself does not provide sanctions against maladministration of welfare funds. It merely sets out the conditions under which a payment to a 'representative of employees' is lawful. Embezzlement and breach of trust would seem to be exclusively subject to state regulation, if any." Regulation of Employee Benefit Plans; Activate the Law of Trusts, 8 Stan. L. Rev. 655, 661 (1956).
- Contra, Note, 35 N.Y.U. L. Rev. 1181 (1960).
- 18        Hearings Before the Subcommittee on Welfare and Pension Funds of the Senate Committee on Labor and Public Welfare, 84th Cong., 1st Sess. (1955), pt. 6 at 902-04.

19

Senate Committee on Labor and Public Welfare, Welfare and Pension Plan Investigation, Final Report, 84th Cong., 2d Sess. (1956), p. 59.

20

Hearings Before the Subcommittee on Welfare and Pension Funds of the Senate Committee on Labor and Public Welfare, supra, at 902-04.

21

Moses v. Ammond, 162 F. Supp. 866, 870 (S.D.N.Y. 1958); Bowers v. Ulpiano Casal, Inc., supra, 393 F.2d at 426; Sanders v. Birthright, 172 F. Supp. 895 (S.D. Ind. 1959); Kane v. Shulton, Inc., 189 F. Supp. 882, 884 (D.N.J. 1960); Holton v. McFarland, 215 F. Supp. 372 (D. Alas. 1963); Fiorelli v. Kelewer, 339 F. Supp. 796, 799 (E.D. Pa. 1972).

22

Employing Plasterers' Ass'n of Chicago v. Journeymen Plasterers' Protective and Benevolent Society of Chicago, Local 5, 279 F.2d 92, 97 (7th Cir. 1960); Bowers v. Ulpiano Casal, Inc., supra; Insley v. Joyce, supra, 330 F. Supp. at 1231; Kroger Co. v. Blassie, 225 F. Supp. 300, 312-13 (E.D. Mo. 1964), vacated on other grounds, 345 F.2d 58 (8th Cir. 1965); Moyer v. Kirkpatrick, 265 F. Supp. 348, 351 (E.D. Pa. 1967), aff'd, 387 F.2d 955 (3d Cir. 1968); Porter v. Teamsters Health, Welfare and Life Ins. Funds of Phila. and Vicinity, 321 F. Supp. 101, 103 (E.D. Pa. 1970); Giordani v. Hoffmann, 295 F. Supp. 463, 470-71 (E.D. Pa. 1969); cf. Snider v. All State Adm'rs, Inc., supra.

Blankenship v. Boyle, 329 F. Supp. 1089 (D.D.C. 1971), cited to us by plaintiffs, is not contra. In that case, although the court found that the defendants had violated their fiduciary duty to the Fund, no violation of § 302 was claimed. Jurisdiction was based upon the general jurisdiction of the District of Columbia district court, which was then in effect, 11 D.C. Code § 521, and on diversity of citizenship, 329 F. Supp. 1092, and the plaintiffs did not claim that the Act had created federal law governing fiduciary obligations. The court considered § 302 only

to the extent of finding that it did not relieve defendants of their common law fiduciary responsibilities. 329 F. Supp. at 1094-95.

23

359 U.S. at 424.

24

See Giordani v. Hoffmann, supra, 295 F. Supp. at 470; Porter v. Teamsters Health, Welfare and Life Ins. Funds of Phila. and Vicinity, supra, 321 F. Supp. at 104.

25

During this period, the employer contribution to the Fund was 8¢ per hour.

26

The assistant business agent of the Union is paid, as is the business agent; the president of the Union is not.

27

These modifications appear on page 2 (two changes) and page 3 and were initialled by the parties. The typewritten changes were made on a typewriter in Albenda's Poughkeepsie office.

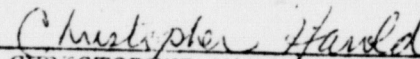


List of Defendants' Attorneys and their Addresses  
to whom Notice of Entry was mailed July 1, 1974.


Granik, Garson, Silverman  
& Nowicki, Esqs.  
Attorneys for Defendant Willis C. Rose  
120 North Main Street  
New City, New York 10956

Guazzo, Silagi & Craner, Esqs.  
Attorneys for Defendant Robert Palatnik  
888 Seventh Avenue  
New York, New York 10019

John M. Donoghue, Esq.  
Attorney for Defendant Joseph Albenda  
54 Market Street  
Poughkeepsie, New York 12601

  
CHRISTOPHER HAROLD

Sworn to before me this  
1st day of July, 1974.

  
MARION L. SLOCUM  
NOTARY PUBLIC, State of New York  
No. 21-4505433  
Qualified in New York County  
Commission Expires March 30, 1978

jks

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
JOSEPH W. HALEY and HENRY  
WHITNEY, as UNION TRUSTEES OF  
THE INTERNATIONAL ASSOCIATION  
OF BRIDGE, STRUCTURAL AND  
ORNAMENTAL IRON WORKERS,  
LOCAL 417, TRAINING AND  
EDUCATION FUND,

Plaintiffs,

vs.

74 Civ. 284

ROBERT PALATNIK, TRUSTEE OF  
THE INTERNATIONAL ASSOCIATION  
OF BRIDGE, STRUCTURAL AND  
ORNAMENTAL IRON WORKERS,  
LOCAL 417, et al.,

Defendants.  
-----X

Before:

HON. LLOYD F. MacMAHON,

District Judge.

New York, March 3, 1974;  
3.30 o'clock p.m.  
(Room 1105)

APPEARANCES:

JOHN R. HAROLD, Esq.,

Attorney for Joseph W. Haley and  
Henry Whitney, plaintiffs.

GUAZZO, SILAGI & CRANER, Esqs.,

Attorneys for Defendant Palatnik;

MITCHEL B. CRANER, Esq., of Counsel.

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DAVID W. SILVERMAN, Esq.,  
Attorney for Defendant Rose.

JOHN DONOGHUE, Esq.,  
Attorney for Defendant Albenda.

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MR. HAROLD: May I on the record, perhaps later,  
identify the people who appear so that we will know we  
have a proper record before you?

THE COURT: All right, go ahead.

MR. HAROLD: I am John Harold, representing  
Joseph W. Haley and Henry Whitney, plaintiffs in the action  
for declaratory judgment, 74 Civ. 284.

Will the other counsel identify themselves and  
the parties they represent?

MR. CRANER: My name is Mitchel Craner.  
I represent Robert Palatnik in that action as a defendant.

MR. SILVERMAN: My name is David Silverman.  
I represent the defendant Willis C. Rose, the last named  
defendant.

MR. DONOGHUE: My name is John Donoghue.  
I represent the defendant Joseph Albenda.

MR. HAROLD: May I call Mr. Cebo, sir?

THE COURT: Yes.



1 jks

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2 MR. HAROLD: Mr. Gebo, take the stand.

3 - -

4 R O B E R T L. G E B O , called as a witness  
5 by the plaintiffs, having been first duly sworn,  
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HAROLD:

9 Q Sir, would you identify yourself and your  
10 employment?

11 A My name is Robert Gebo. I am manager of the  
12 New York Telephone Company, Newburgh.

13 MR. CRANER: Your Honor, may I interrupt just  
14 at this moment? I am not quite sure what this hearing  
15 is about. It is my understanding, on the action  
16 74 Civ. 284, there is an application before this Court  
17 for a motion to stay the arbitration proceeding.

18 THE COURT: If that is your understanding, it  
19 isn't mine.

20 As I understood it, I was hearing whether  
21 contract hiring Mr. Rose was invalid.

22 MR. HAROLD: Correct.

23 THE COURT: For declaratory judgment that it is;  
24 is that it?

25 MR. HAROLD: Yes, sir.

MR. CRANER: May I state for the record, your Honor, that my client the defendant in this action, Robert Palatnik, is not in the country. He will not be able to be in court today to testify, if needed.

I did not know -- it was not my understanding that we would go to trial today on the issue of the declaratory judgment.

THE COURT: On that score, if it should develop that we need his testimony, since there is no jury, the Court will hear an application at the conclusion of this hearing as to whether we can wait to hear him at some other time.

MR. CRANER: Thank you very much, sir.

BY MR. HAROLD:

Q Sir, did I ask you to produce records in respect to a telephone number identified as 914-561-5520, with a credit card number 065?

A Yes, sir.

Q Did I ask you?

A Yes, you did.

Q And did you produce such records?

A I have such records.

Q May I see them, please?

THE WITNESS: Your Honor, may I ask a question?

THE COURT: No. Just answer the questions. He asks the questions, you answer them. I say whether you have to answer them.

(Produced.)

Q And did I also ask you to construct for th is subscriber the identification of the numbers called and calling this number on a collect?

A Yes, sir, you did.

Q And do you have such a record with you?

A Yes, sir.

Q May I have it, please?

(Produced.)

MR. HAROLD: May I physically separate these?

THE WITNESS: Yes.

MR. HAROLD: If you please, your Honor, I don't want to take anything else. This is all I want.

I would ask the Court clerk to mark as Union Trustees' for identification a series of telephone bills. We need not take the Court's time now to identify each in turn if they just be labeled. I can go forward later.

THE COURT: Exhibit 1, Trustees' for identification.

(Trustees' Exhibit 1 was marked for identi-

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1                    fication.)

2  
3                    MR. HAROLD: I state to the Court and fellow  
4                    counsel that Trustee 1 are the bills rendered to this  
5                    number for the billing period September, October,  
6                    November.

7                    THE COURT: Rendered at what number?

8                    MR. HAROLD: Under the number 561-5520 for  
9                    the billing period of September, October, November and  
10                    December.

11                    So there will be no mystery about it, these --

12                    THE COURT: What is the materiality of this?

13                    MR. HAROLD: Sir, one of the things we want  
14                    to prove is the activity or lack of activity of the fund  
15                    administrator. That is why I am putting these in  
16                    evidence.

17                    I have reason to believe that I can show the  
18                    Court that --

19                    THE COURT: All right.

20                    MR. HAROLD: I now offer them in evidence.

21                    MR. SILVERMAN: May I respectfully state to the  
22                    Court that pursuant to even the complaint which is before  
23                    you, the thrust of this action is that the employment  
24                    contract which was entered into in June was one that was  
25                    either induced by fraud --

THE COURT: You say it was fraud in the induce-  
ment.

MR. SILVERMAN: Yes.

THE COURT: Sustained.

It is immaterial what he did afterwards, I would think, unless somehow it relates back to this period.

Does it?

MR. HAROLD: May I be heard? Somewhat like the phrase, "The punishment doesn't fit the crime," which therefore is some indicia of why the punishment was so severe, so also, if we are dealing with a very minor fund, with no activity at all in its functioning, and as administered by this administrator, then I think it relates back to your Honor's mental judgment that he needs to make, that this was a contract that didn't need to be made.

THE COURT: All right, I will take it for --

MR. CRANER: I am going to join in Mr. Silverman's objection.

THE COURT: I note your objection. I will accept it for what it is worth. It may have some relevance in the context of the entire evidence when we hear it.

MR. HAROLD: I ask that a piece of paper marked

1 jks

Gebo-direct

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2 page 2 and 3 with telephone numbers on it and names of  
3 people on it be marked for identification as Union  
4 Trustees' 2.

5 THE COURT: You can mark them yourself. When  
6 you offer them in evidence we will see what they are.

2 7 Q Mr. Gebo, would you give us a little more  
8 identification of what this purports to be?

9 A Yes, sir. Th is is a copy of a letter that  
10 I sent to you on January the 13th of this year.

11 Q And it purports to do what, Union Exhibit 2?

12 A This exhibit, this copy of the letter that I  
13 sent to you, was in specific response to your letter of  
14 January 4th, in which you stated that you were acting as  
15 power of attorney.

16 THE COURT: I can read. Put the papers in.  
17 I can read English.

18 MR. HAROLD: I offer it in evidence.

19 MR. SILVERMAN: Will your Honor merely note a  
20 similar objection to the previous objection entered, the  
21 fact that this is something which took place long after the  
22 contract?

23 MR. CRANER: Again I join in the objection.

24 THE COURT: All right.

25 MR. HAROLD: May Mr. Silverman and I approach







1 words what you do, who you are?

2 A I am an iron worker in Local 417 in Newburgh,  
3 and I am also an instructor in the apprentice school.

4 Q Please raise your voice and tell the Court in  
5 your own words what you do as an instructor and how long  
6 you have done it?

7 A Well, I have a class of the third year presently  
8 in the apprentice school, and before June of this year I  
9 used to take care of records in the school and refer them  
10 to our president of the local.

11 Q Please describe for the Court how long you have  
12 been associated with this school?

13 A About ten years.

14 Q When did it become funded by the employer?

15 A I believe in 1967.

16 Q How does it operate?

17 A It is run through a JAC, which is a joint  
18 apprenticeship committee.

19 Q Of what?

20 A Of employers and union members.

21 Q And when does it operate?

22 A The JAC should operate year round. The school  
23 is open from September through April for a total of 144  
24 hours per year.  
25



Q 144 hours a year, how many nights a week?

A Each class spends two nights a week in school for a total of five hours a week.

Q With the total number of days a year, you have counted the vacation days and the summer closing?

A Right.

Q For how long is it closed during the summer period? When does it end in the spring?

A We start usually around the middle of September and go for 144 hours. Usually it ends around the middle of April.

Q With holiday periods in between?

A Included, yes, sir.

Q How many instructors are there?

A We have three instructors.

Q Generally, and don't burden the record, what do you teach, the three instructors?

A We teach every phase of our trade that we do.

Q About how many apprentices -- how does the incoming and outgoing number of apprentices come about?

A We have a total of about 40 or 45 boys at school and they come in at an average of about 12 or 15 boys per year for a period of three years.

Q Now, up until July 1 of this year did the school

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have any fund administrator?

A Up until July 1 of this year --

Q Of 1973.

A No.

Q Tell the Court in your own words how it functioned from an administrative point of view, if you know, and to the extent you know.

A Well, I was a member of the JAC, secretary, and I was also an instructor in the school, and I would take attendances and various papers that have to be filled out and refer them to the office upstairs, to Mr. Rose or Mr. Mims and --

Q Please identify, at that time who Mr. Rose was and who Mr. Mims was.

A Mr. Rose was the chairman of the JAC, president of the local, and also assistant business agent.

Q In which capacity was he paid?

MR. SILVERMAN: I would object, your Honor, as to which capacity he was paid.

THE COURT: Sustained.

MR. HAROLD: Subject to connection. I will bring it out with the next witness or relate it.

Q Continue, please.

A He was getting paid as an assistant business agent.

2 MR. HAROLD: Forgive me.

3 THE COURT: God gives you your witnesses.

4 Go ahead.

5 Q After July 1, what if anything did Mr. Rose do  
6 in the functioning of the school, to your knowledge?

7 A Well, there wasn't anything done until July or --  
8 I'm sorry -- September or October, when they started to ask  
9 for applications for new members, and I believe that he  
10 processed these, but then that had to be turned over to  
11 the JAC for further consideration.

12 Q Did he visit the first class?

13 A He visited all the classes the first night they  
14 began.

15 Q Who did the similar processing of applicants  
16 before July 1? You have told us, I think, but clarify  
3 17 it again.

18 A The applicants would come into the office and  
19 were given applications to fill out, and these in turn were  
20 kept on file until just before the school started, to be  
21 processed by the JAC.

22 Q What was the method of examination, of tests  
23 given to the students?

24 A We had interviews with the students and then we  
25 had a test that was given to them if they passed the first



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Bouchard-direct

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or second interview. If they had the minimum requirements.

Q Was there occasions -- and I am reading -- that you referred the question of students that weren't attentive to their work to officers of the union?

A I don't understand the question.

Q Were there occasions when you, as an instructor, referred the name of students to officers of the union in respect to their work performance?

A Yes. Occasionally I would send a report up to the office stating the status of the student or their attendance, their performance of work, and also if they had done so much of one phase of the work, I would recommend that they go into another phase, to the office.

Q And have you done that since July?

A No, I haven't.

Q Who had? Another man that has taken my place as of July.

Q Another teacher?

A Yes.

MR. HAROLD: I have no further questions of this witness.

MR. SILVERMAN: Just one or two, if I may, your Honor.

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Bouchard-cross

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CROSS EXAMINATION

BY MR. SILVERMAN:

Q The apprenticeship training which you are involved in, this is done under the auspices of the State, is it not, where you have an apprenticeship council in the State of New York, the training that you do is under a State program?

A I don't know what capacity the State is in, sir.

Q Do you know whether reports are made to the State apprenticeship council?

A No, I don't.

Q I understand also that some of the apprentices who are taking your program have available to them certain Federal aid and certain G.I. benefits and things like that?

A That is true.

Q That all requires record keeping, book work, so that the Federal Government, on whatever forms it has, may be apprised of what is going on with respect to the student, is that right?

A Yes, sir.

Q Do you take care of that?

A No, I don't.

MR. SILVERMAN: No further questions.

MR. CRAMER: I have no questions, your Honor.

1 jks

Bouchard-redirect

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2 REDIRECT EXAMINATION

3 BY MR. HAROLD:

4 Q Who takes care of that clearing to the Federal  
5 Government?

6 A The president of the local.

7 Q Has that been the case for the last ten years?

8 A That has been the case, or the JAC, the chairman  
9 of the JAC.

10 MR. HAROLD: I have no further questions.

11 THE COURT: All right, you are excused.

12 (Witness excused.)

13 MR. HAROLD: May I next call Mr. Haley.

14 - -

15 J O S E P H W. H A L E Y , called as a witness by  
16 the plaintiffs, being first duly sworn, testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. HAROLD:

20 Q What is your present capacity with Local 417?

21 A At the present time I am the president, assistant  
22 business agent and I am also a trustee on the Training and  
23 Education Fund.

24 Q How long have you been a member in the union and  
25 an employee in the industry?



1 A I have been an iron worker for 20 years.

2 Q How long have you been actively interested in  
3 the internal affairs of Local 417?

4 A 17 years.

5 Q Prior to July 1, 1973, who were the union  
6 trustees of this fund?

7 A William P. Mims and Willis C. Rose.

8 Q And who were the employer trustees?

9 A Joseph Albenda -- excuse me, you are asking this  
10 question as to when I took over?

11 Q Prior to July 1.

12 A Prior to July 1.

13 Q Or prior to you becoming trustee.

14 A The last two that I know of would be Robert  
15 Palatnik and Joseph Albenda.

16 Q Prior to July 1, what office in the union did  
17 Willis Rose hold?

18 A He was the elected president. He was an  
19 assistant business agent by appointment. He was a trustee  
20 on the Training and Education Fund, a trustee on the Annuity  
21 Fund, a trustee on the Welfare Pension Fund and also a  
22 chairman of the Joint Apprentice Committee.

23 Q And what was William Mims before the successor  
24 union trustee to the fund?  
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A He was the elected business agent, financial secretary-treasurer, trustee to the Annuity Fund, Training and Education Fund, Welfare Pension Fund.

Q Who employs under the rules of your organization the assistant business agent?

A Who employs the assistant business agent?  
Both the business agent and assistant business agent are employed by the local union and paid out of the local union's General Fund.

Q What happened in respect to the employment of Mr. Rose as assistant business agent in May of 1973?

A A motion was put before the membership to relieve him of his temporary appointment due to the lack of work and the insufficient funds. He was removed from the payroll in that capacity.

Q What happened in the elections of the local in that spring in respect to the new term beginning July 1?

A Mr. Mims was defeated as business agent by Floyd Marks and Mr. Rose was defeated for the office of president by myself, Joseph Haley.

MR. HAROLD: May I borrow back the marked minutes? I made some notations on one of the copies and I don't know whether I gave you that copy.

THE COURT: Sure, here you are.

MR. HAROLD: I am leading, Counsel.

Q Did you attend a June meeting of the membership of the local, June 1973?

A Yes, I did.

Q And what if anything happened at that meeting concerning the employment of a fund administrator?

A Upon the question being asked, was there any such thing in existence as a contract for Apprentice Fund coordinator, the answer given to the membership by the then president, Mr. Rose, to my recollection, was there was no such contract signed at that present time.

MR. HAROLD: If I may delineate, I call the Court's respectful attention to the fact that the instrument, the five-year contract, preceded by date that date. The instrument was dated May 29, 1973. The testimony is in relation to a June 1 meeting.

MR. SILVERMAN: May I respectfully refer the Court, so as not to clutter up the record, that the agreement is dated -- it says agreement made the 29th day of May 1973, effective the 2nd day of July 1973.

THE COURT: You were referring, I take it, to the agreement annexed to the complaint?

MR. HAROLD: Yes.

MR. SILVERMAN: That is the agreement, your



Honor, wherein Mr. Rose was employed.

THE COURT: All right.

Q Now, since July 1 have you continued to function as president?

A I have.

Q Tell the Court in your own words what responsibilities you have had in respect to the administration of the Apprentice Fund in a proper manner and also as a fund trustee.

A Well, since July 1, that is when we found out there was a contract in fact signed. The general membership had instructed the executive board to hire an attorney to check into the legality of such a contract.

Being president of the local union, it was my job to represent the wishes of the membership. Also being a trustee of said fund, I was doubly obligated to follow through the best we could.

Now, the executive board, after that date, after that date, hired Mr. Harold. We had a meeting at the Holiday Inn in Newburgh previous to hiring Mr. Harold with Mr. Albenda, Mr. O'Hara, Mr. Nims, Mr. Rose, Mr. Marks and myself, at which time we questioned the contract. We were offered two alternatives by Mr. O'Hara. We could either modify the said contract or Mr. Rose could resign.

1 I in turn offered a third one, that we buy the  
2 contract back.

3  
4 Now, the feelings of the membership were that  
5 all elected officers in the local union are elected by the  
6 body for three years. Here was a contract signed by  
7 trustees hiring their own trustee on a five-year contract  
8 at a salary and expenses greater than we pay our business  
9 representative, who represents the entire work force of  
10 the local union.

11 We were turned down on the bid to buy the  
12 contract back.

13 We then went on in, contacted Mr. Harold, and  
14 told him we wanted to check into the legality of the  
15 contract.

16 All this time Mr. Rose was continuing to show up  
17 every day and check in at his office and check out.  
18 Whatever his jobs were, I don't know, because I was out in  
19 the field working.

20 Q Have you as president visited the positions of  
21 employment in your industry in your area?

22 A I have in the past two weeks more so since I  
23 have been hired as assistant business agent. I did in  
24 the capacity of president go down on opening nights of the  
25 apprentice school to check all three classes. I also was

instrumental in appointing two new instructors to replace the others. We retained Mr. Bouchard. We reappointed a Bill Lynton and Richard Maguire.

We ran into difficulty, though, since the fund wouldn't -- we couldn't get anybody to sign the checks. We have a checkbook full of unsigned checks.

Q Pass that, if you please. We have that matter cleared up. It is not related to this action.

A Oh, I'm sorry.

Q To your knowledge, as president, did you ever find out that Mr. Rose had serviced the apprentices, interviewed the apprentices, visited the schools, interviewed the teachers or inquired as to the functioning of the school?

A Well, being an iron worker in the field, you are talking about something that I would have to do part time. Most of this, the record keeping, the job keeping, is being done, since Mr. Pose's dismissal, and is being done since school started, as it was previous to the contract.

MR. SILVERMAN: Your Honor, I object to that.

The witness did not answer the inquiry as to whether Mr. Rose had done those things.

THE COURT: Sustained. Strike it out. It is



not responsive.

MR. HAROLD: Would you read the question back?

It was a rather long question.

THE COURT: I thought it was rather compound, myself.

MR. HAROLD: Let me take it apart and not read it again, if it please the Court.

Q To your knowledge, since July 1, have you known of Mr. Rose to visit any apprentices in respect to their training; yes or no?

A        My only actual knowledge of Mr. Rose visiting the apprentices was on the three nights that school originally opened.        I was there in his presence; he was there.

Q I am leading:

Do stewards make regular reports of on-job activities to your business agent?

A All stewards report every man on their job, their hours worked. That is a weekly report.

Q Who assigns work within your jurisdiction?

A The business agent, Mr. Marks.

Q Would this include the assignment of apprentices?

A Apprentices --

Q I beg your pardon -- of persons going to school?

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A The business agent assigns work to every member, apprentice or journeyman.

MR. HAROLD: I have no further questions of this witness.

THE COURT: Could we defer cross-examination for a minute. I have a jury out and apparently there is a note.

(Recess.)

MR. HAROLD: With the Court's permission, one or two more questions of this witness.

BY MR. HAROLD:

Q Is there a paid secretary that does work for the Apprentice Fund, secretarial work?

A We have a secretary that does services to funds. She services the Apprentice Training Fund and the Annuity Fund and her salary is split between both funds.

Q Have you made a search of the offices of the Trust Fund and the files of the union to find out, to see if you could find any minutes of the apprentice trust reflecting the hire of Mr. Willis Rose or any notice in respect to such hire from anybody to anybody?

A I have been unable to find any minutes with reference to a meeting in which the coordinator was employed or hired.

Q And you searched?

A I have looked, yes, and we have inquired.

MR. HAROLD: I have no further questions.

THE COURT: Are there any minutes respecting authorization to hire a coordinator?

THE WITNESS: No minutes have been found by me in all the places I have inquired. I have inquired of the Martin Siegel Company who takes minutes at our annuity meetings, but they claim they were not hired by the Training Fund to take such minutes. There are some minutes but none with reference to the hiring of a coordinator, to my knowledge.

Q And you have looked through all of the files --

A All that were available to me.

Q -- in the room allocated for the use of the Trust Fund, and you have looked through all of the union files, in particular for these minutes?

A I have been unable to find any minutes.

MR. HAROLD: Very well, sir. I have no further questions.

THE COURT: Cross-examine.

CROSS EXAMINATION

BY MR. SILVERMAN: .

Q You became the president of the union in July,



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is that correct, or when did you become president of the union?

A Election was the 30th of June. I was sworn in the first meeting in July of 1973.

Q And the first meeting in July you appointed yourself to the apprentice -- as apprenticeship trustee, is that correct?

A No, sir.

Q Who appointed you?

A I didn't appoint myself to replace Mr. Mims until, let's see, it was -- the date escapes me.

Q But, in any event, you appointed yourself as a trustee?

A Yes, sir, I did.

Q Of this particular fund?

A Yes, I did.

Q In the month of August or late July, as soon as you had been beneficially appointed by yourself to this position --

MR. HAROLD: Objection to the framing of the question "beneficially appointed." That is an adjective, not a question.

THE COURT: Sustained.

Q After your appointment as a trustee of this

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1 particular fund, did you not thereafter attend meetings  
2 which were held at various resort hotels with respect to  
3 duties of a trustee of this type of fund?  
4

5 A I don't know the month. I attended an  
6 apprentice conference held by the Iron Workers Inter-  
7 national.

8 Q Where was that held?

9 A At the Playboy Club in New Jersey, along with  
10 Mr. Albenda. I took this action on --

11 Q No, my only question is did you go?

12 A Oh, yes, I went, yes, sir. As a trustee it  
13 was my right.

14 Q All right. And commencing in about September  
15 of 1973 did you give instructions to the effect that the  
16 various people associated with the union training program  
17 were not to report or not to have any commerce or anything  
18 to do with Mr. Rose?

19 A There has been no direct order to that, to my  
20 recollection.

21 Q Did you at any time give any directions to the  
22 instructors that they were not to turn over attendance  
23 lists and other such items to Mr. Rose?

24 A I gave the instructors orders that they were not  
25 to turn over any attendance records to Mr. Rose, in my

capacity as a trustee and president of the local union, since it was our position that the job did not legally exist.

Q And thereafter you directed everyone, inclusive of the secretary, not to have anything to do with Mr. Rose?

A No, I give the secretaries no orders.

Q Did you change the offices around so that Mr. Rose was separated?

A The office -- the girl was taken out of the office and returned to the iron workers office, not by the trustee, but by the executive board of the local union, since she was doing 90 per cent of the work with reference to collecting funds for the local union.

Q Let us see, perhaps we can save a lot of questions and a lot of answers.

Commencing in September of 1973 did you and those who were in executive positions of your union do all within your power to see that Mr. Rose could not act as the administrator of this fund?

A Not to my knowledge.

Q You did nothing to prohibit him from acting as administrator?

A I did nothing to prevent him other than --

MR. HAROLD: Let me help counsel, if you wish.



There came a meeting of the trustees -- and identify the date for me and I will concede it -- where, as far as the union trustees were concerned, we terminated his employment.

Q When did you do that?

A The locks were changed in November 27th. I think the last day of the payroll was the end of October.

MR. HAROLD: And that is stated --

Q So from the end of October, based upon the resolution of two union trustees, you considered, in your own mind, the functions of Mr. Rose at an end?

MR. HAROLD: Objection. I did not so stipulate. He may ask the question.

MR. SILVERMAN: Let me ask the witness.

THE WITNESS: Please, you already couched the question inapposite to the way I phrased it. You said to union trustees.

THE COURT: Let's take it one at a time.

The objection is simple - the question is bad in form.

MR. SILVERMAN: If I may rephrase the question, your Honor.

Q As of the end of October, was it your opinion, as a trustee, that Mr. Rose was to no longer act as

Next witness.

(Witness excused.)

MR. HAROLD: Mr. Whitney, please.

--

H E N R Y        W H I T N E Y ,    called as a witness by the  
plaintiffs, having been first duly sworn, testified  
as follows:

DIRECT EXAMINATION

BY MR. HAROLD:

Q    Please describe to the Court your present status  
in Local 417.

A    My present status in Local 417, the only duty I  
hold is a trustee of the Training and Education Fund.

Q    In May of 1973 were you a member of the local  
executive board?

A    Yes, I was a member of the executive board.

Q    Did there come up at that executive board a  
conversation with Mr. Rose concerning his employment?  
Yes or no.

A    I don't recall any conversation at an executive  
board meeting of employment-- specifying fund coordinator?

Q    Was there a conversation at an executive board  
meeting in May with Mr. Rose concerning employment in the  
local union?

1           A       Yes, his employment, if I am thinking along  
2 your lines, he was terminated, his job as assistant  
3 delegate was terminated by the membership of Local 417.

4           Q       What if anything in May did Mr. Rose say about  
5 that at or after the executive board meeting of May 4th?

6           A       Well, during the executive board meeting he was  
7 pretty well put out about it, and he made the statement  
8 that he was out to grab everything that was ready for the  
9 taking.

10          Q       Is that the substance of his words or as best  
11 you can recollect the words?

12          A       It is about the best I can recollect, yes, sir.

13          Q       That was immediately after the loss of his  
14 employment as assistant business agent?

15          A       That's right.     The executive board meeting was  
16 held after the membership meeting.

17          Q       What happened at that membership meeting?

18          A       The membership meeting was when brother Rose's  
19 employment as assistant business agent was terminated by  
20 a vote of the membership.

21          Q       On the same night there was an executive board  
22 meeting?

23          A       Immediately after the regular membership meeting  
24 there was an executive board meeting.  
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Whitney-direct

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Q On that same night, this is the conversation you referred to?

A Yes.

MR. HAROLD: Your Honor, rather than waste time, if I ask the same questions in regard to the June 1973 meeting with Mr. Willis Rose saying he did not have a job, he would give me the same answers. I will not ask them if it pleases the Court and my adversaries.

MR. CRANER: I have no idea what the witness is going to say.

MR. SILVERMAN: I have no idea --

THE COURT: He just represented to you that if he asked the same questions in respect to this other person, the witness would give the same answers.

MR. SILVERMAN: I will take that concession, to save time.

MR. HAROLD: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. SILVERMAN:

Q At this same executive board meeting which you recounted a conversation with Mr. Rose, did you not, yourself, state at that executive board meeting that the one job you wanted was to become president of the union?

2 A I am pretty well sure this was a job -- that  
3 was a position I always wanted to hold. I ran for that  
4 position quite a few years ago against brother Rose, but  
5 I am sure brother Rose can recollect that my statements  
6 were that I was not a candidate for any office in that local  
7 union.

8 Q When you ran for president and were beaten by  
9 brother Rose, that was about by 4 to 1, wasn't it?

10 A Yes, it was an overwhelming majority.

11 Q Let me ask you this:

12 You were appointed as a trustee to the Apprentice-  
13 ship Fund when?

14 A I believe it could have been the latter part of  
15 July or August. I am not really sure.

16 Q All right. And from the time you were appointed  
17 as a trustee in August until you voted on a resolution to  
18 discharge Mr. Rose, did you ever make any inquiry into the  
19 type of work he was doing?

20 A Did I make any inquiry?

21 Q Yes.

22 A Well, when I --

23 Q Just what you did. Just tell me what you did  
24 then.

25 A At a trustee meeting, when I was appointed

2 trustee, we had a trustee meeting, I believe it was in  
3 October, and I asked this question because I didn't see  
4 nothing of any duties that was outlined to brother Rose,  
5 and I asked this of brother Albenda.

6 Now, as far as checking into anything like that,  
7 I have asked for minutes of all previous meetings and as  
8 of yet to date we haven't received anything.

9 Q The only thing that you did, then, prior to your  
10 affirmative vote to discharge brother Rose was to make  
11 inquiry as to whether any minutes existed?

12 A That's right.

13 MR. SILVERMAN: Thank you very much, sir.

14 MR. HAROLD: No questions.

15 MR. DONOGUE: No questions.

16 THE COURT: You are excused.

17 (Witness excused.)

18 MR. HAROLD: Mr. Mims, please.

19 - -

20 W I L L I A M P. M I M S , called as a witness by  
21 the plaintiffs, being first duly sworn, testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. HAROLD:

25 Q Please state your status with Local 417.



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Mims-direct

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2 A At the present time I am a journeyman iron  
3 worker.

4 Q What was the period of your services as trustee  
5 of the Apprentice Fund?

6 A Well, since its inception, what was that, 1967  
7 or thereabouts, I guess.

8 Q And when did your status end?

9 A My status ended at about a week after the  
10 election, two weeks after the election.

11 Q Some time in early July?

12 A That's correct.

13 Q Do you have any minutes or do you know of any  
14 minutes with respect to the action of the board of trustees  
15 in respect to the hire of Mr. Pose?

16 A Well, I want to clarify that --

17 Q No, please. Do you is the first question.  
18 Answer yes or no.

19 A Do I? No, I do not.

20 Q Did you have a conversation with the president,  
21 Mr. Haley, the trustee, Mr. Whitney, and myself and yourself  
22 in respect to this matter?

23 A Yes.

24 MR. SILVERMAN: I would object, your Honor, to  
25 any conversation that he has with counsel with respect to

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this case.

THE COURT: Overruled.

Q Now, sir, you heard Mr. Whitney talk about Mr. Rose losing his employment, and that was in May 4, 1973, and that in words or effect he would grab anything he could. Did you not hear his testimony in that respect?

A Well, I don't know if that was exact terminology used at the time, but it was--

Q Well, you give us the terminology that was used.

THE COURT: As best you can recollect.

Q As best you can recollect.

A Well, as I remember it, I believe that Mr. Rose was very disturbed as maybe he should be over his being terminated, and when he come in the door, he was very unrelaxed, and at that time I believe he said someth ino like, "Well, if that's the way they want to play the game, that's the way we'll play it," or something to that -- some kind of words like that.

Q Did he refer to future employment in the same context at that time?

MR. SILVERMAN: Well, can I object on the ground of leading in this crucial issue, your Honor?

A Well, no, not at that time.

MR. HAROLD: You got a better answer.

MR. SILVERMAN: That's a better answer. I withdraw the objection, your Honor.

Q Now, what happened immediately subsequent to May 4th in respect to the draftsmanship of this contract of employment, to your knowledge?

A The drafting of the contract?

Q Yes, sir, immediately thereafter, May 4th or right after that.

A You are not talking preceding; you are talking after?

Q Yes, right after.

A Well, Mr. Rose had told me that -- we had discussed the Apprenticeship Training Fund at the time, and he said that he was going to take a trip down to see Mr. O'Hara, who served as the attorney at that particular time for the Training Fund. And from that point on, the following day or maybe two days later, he took a trip down the city here and seen Mr. O'Hara, and a contract was drawn up.

Now, the contents of the contract was unbeknownst to me until it was brought back, which I didn't care too much about -- at least I felt the attorney representing the local union should have at that time called me as being



the business representative for the local union and at least make me aware as to what the contract was or what the contents of it was.

Q And now, I show you Paragraph 13 of the complaint and ask that you read it, if you please.

A You will have to allow me to put on my glasses. I can't read without them. - 13?

Q If you please.

A "That Willis C. Rose stated, after the drawing of the contract and before its execution, that he, Rose, was holding the job as administrator of the fund in abeyance as security if he should lose the election for the president."

Q When do you recall hearing that statement, if you did?

MR. SILVERMAN: I will object to that as improper as to form, your Honor.

THE COURT: Yes, sustained.

Q At any time did you hear Mr. Willis Rose state that he was holding the job as administrator in abeyance as security if he should lose the election then coming for president, in substance, one way or another?

MR. SILVERMAN: I object, your Honor, once again, as to form.

THE COURT: It is as though he were cross-examining. I will take it. There is no jury.

Did you ever hear him say anything like that?

THE WITNESS: Maybe something in essence to that, yes, I did.

Q Give us the essence.

A Well, the essence might have been that in the event he should lose the election for the president he was going to use it as a back-up job, so to speak.

Q In respect to yourself and the signature of the contract --

MR. HAROLD: Withdrawn, with the Court's permission.

Q Did you sign the contract of employment?

A Yes, I did.

Q What caused you to do so?

MR. CRANER: I am going to object to that, your Honor.

MR. SILVERMAN: I will object, your Honor, unless there is any testimony that it was not a wilful act.

THE COURT: Overruled. I don't know what the answer is going to be. It might have been pursuant to a resolution of the board of trustees. How do I know what it is? I will strike it out if it isn't proper.

1           A       Well, the way that all come about was the fact  
2                   that the election was coming up, it was all brought about.  
3                   I was approached with the contract prior to being, as I  
4                   mentioned before, prior to my having any knowledge of  
5                   what the contents might be, and I was very reluctant upon  
6                   certain portions or part of it, although if we had the  
7                   minutes here, at this particular time, which it should have  
8                   been minutes written up, it would have reflected that this  
9                   job of administrator was proposed by the Employers Associ-  
10                  ation and which we all agreed, but I didn't think it would  
11                  come on that quick until after the election was over with,  
12                  win or lose.     And from that point on, when Mr. Rose  
13                  brought the contract back to me, as I say, I was very  
14                  reluctant as to signing it, and I told him that the way it  
15                  should have been, it should have been sent out to the  
16                  members and any qualified person who thought they had the  
17                  qualifications for the job should be sent out letters stat-  
18                  ing as such, regardless of who the trustees might have  
19                  been.  
20

21                         Assuming I was going to be reelected again, I  
22                         think there would have been a problem on it, to be perfectly  
23                         frank with you.

24                         And Mr. Rose went on to say to me at that time  
25                         that, "Look," he says, "if you don't want to sign it, don't



2 sign it. I'm chairman of the fund," which he was also  
3 chairman of the trustees, as well as the JAC, "and I'll  
4 have my brother sign it or appoint another trustee and have  
5 him sign it," so it was academic.

6 Q To your knowledge did Mr. Albenda, an employer  
7 trustee, sign the contract?

8 A Yes, he did.

9 Q Was there a conversation between you and he?

10 A Yes, there was.

11 Q Please tell the Court that conversation.

12 A Well, when Mr. Rose took the contract up to Mr.  
13 Albenda, who lives in Poughkeepsie, up to his shop, Mr.  
14 Albenda called me in relationship to the contract, and he  
15 didn't particularly care about certain portions of it,  
16 which I think, if you see the contract, certain portions  
17 of it are stricken out, and he asked me what I thought of  
18 it and I told him, "Well," I said, "look, it's going to come  
19 anyway. You're the people who proposed it."

20 So he said, well, to me he says, "Well, listen,  
21 I don't like the looks of this thing. It looks like you've  
22 got trouble in the camp. You've got internal problems."

23 So I said to Mr. Albenda at the time, not knowing  
24 what he meant, "I don't know what you mean by internal  
25 problems."

He said, "Don't worry, I'll straighten everything out."

Well, unbeknownst to me, the internal problems turned out to be between Mr. Rose and myself, according to what Mr. Albenda said. Mr. Albenda is not here to testify to that, but that is what he told me later on.

Q What did Mr. Albenda say to you in respect to Mr. Rose and the signing of the contract?

A Well, he said there had to be modifications made in the contract which there were certain modifications made, and he was still very reluctant to sign it until certain problems got straightened out internally within the local union.

Q Did he tell you a reason why he signed the contract?

A Well, he did, yes. He felt that I was doing a very fine job up in that area and he didn't want to see me be defeated, and although you never know how an election is going to turn up, maybe I would have by Mr. Rose, maybe I wouldn't -- I don't know that. That will never --

Q Mr. Rose wasn't running for business agent?

A No, he was not.

Q Was it intimated or was it stated that Mr. Rose would run for business agent against you?

2 A Well, Mr. Rose had stated to me that at that  
3 particular time, when I told you before that "Either sign  
4 it or don't sign it," "Look, I'll do what I can. I'll do  
5 what I have to do."

6 (Maybe that's what he meant by that. I don't  
7 know.

8 MR. SILVERMAN: Your Honor, I object to maybe  
9 that is what he meant.

10 THE COURT: Yes, I would think so.

11 Sustained. Strike it out.

12 Q What if anything did Mr. Albenda tell you as  
13 the reason he signed it in respect to what Mr. Rose might  
14 or might not do in the then-coming election, if you know?

15 MR. SILVERMAN: Your Honor, not only is it  
16 compounding hearsay upon hearsay, it is hypothetical.

17 MR. HAROLD: It is a conversation he had with  
18 him?

19 THE COURT: I will take it.

20 Go on.

21 A Well, Mr. Albenda, as I mentioned before, said  
22 that, "Look, rather than see you get, you know" -- see,  
23 there was internal problems within the local union, when  
24 modifications are made, which they were made, and took it  
25 down back to Mr. O'Hara, and he made the modifications within



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the scope of the contract, and then brought them back up  
again for signatures.  
MR. HAROLD: I have no further auestions.  
MR. SILVERMAN: I have just one question.  
CROSS EXAMINATION  
BY MR. SILVERMAN:  
Q The president of the union, that is not a paid  
position, is it, just president?  
A No, sir.  
MR. SILVERMAN: Thank you.  
No further questions.  
MR. HAROLD: No further redirect.  
(Witness excused.)  
THE COURT: Any more witnesses?  
MR. HAROLD: One more.  
Mr. Marks, please.  
- -  
F L O Y D A. M A R K S , called as a witness by  
the plaintiffs, being first duly sworn, testified as  
follows:  
DIRECT EXAMINATION  
BY MR. HAROLD:  
Q Mr. Marks, what is your current capacity with  
the union?

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A Business agent, financial secretary for Local 417.

Q Very briefly, what does the job of business agent encompass?

A The business agent represents all members in Local 417.

Q Speak up, please. Does that mean you service the jobs, you administer the contract, you see to the fact that the contract is properly lived up to?

A Yes, I do.

Q Then is it part of your duty to visit the jobs and see that the employment relation is working out right?

A Yes, it is.

Q Now, in respect to the --

MR. HAROLD: Let me assist, please.

The contract says that Mr. Pose would also get the fringe benefits and I am just going to ask a few questions.

Q What is the cost as of July 1 payable by the Annuity Fund into the other funds under the terms of the contract with Mr. Rose?

A You mean to all funds pertaining to Local 417?

Q Yes, sir.

A At that date it was \$1.06 to the Vacation Fund.

Q Per?

2 A Per hour. 96 cents to the Pension Fund per  
3 hour. 47 cents to the Annuity Fund per hour. 60 cents  
4 to the Health Fund per hour. 4 cents to Training and  
5 Education per hour. 10 cents to Industry Promotion per  
6 hour.

7 Q Is this based for Mr. Rose on a 40-hour week?

8 A Yes, it is.

9 Q Do you assign job? Is that your responsibility?

10 A That is my responsibility to assign all jobs  
11 pertaining to Local 417.

12 Q Please tell the Court when you offered employment  
13 to Mr. Rose in what kind of work and on what occasions and  
14 what conversation you had with him in respect to it?

15 A Right after --

16 MR. SILVERMAN: May I respectfully submit, your  
17 Honor, that that would be completely immaterial in attacking  
18 the contract as fraudulently induced or as an improper  
19 exercise of power. That would deal with diminution of  
20 damages, if any, which have been suffered by Mr. Rose,  
21 which is not an issue.

22 THE COURT: I have been patiently waiting to  
23 hear something that has to do with the invalidity of a  
24 contract in its inception. I am hearing it. I will take  
25 it for what it is worth.



2 MR. HAROLD: I totally agree with counsel and  
3 I withdraw the question in this proceeding.

4 I have no further questions of this witness.

5 MR. CRANER: No questions, your Honor.

6 MR. SILVERMAN: No questions.

7 THE COURT: You are excused.

8 (Witness excused.)

9 MR. HAROLD: I would ask Mr. Donoghue to respond  
10 to my notice to produce as attorney for Mr. Joseph Albenda  
11 in respect to any minutes in regard to the employment of  
12 Willis Pose by the trustees.

13 MR. DONOGHUE: Mr. Albenda has diligently  
14 searched his records and he has no records of the fund or  
15 minutes in his possession. All those records and funds  
16 were left, to the best of his knowledge, at the office of  
17 the fund at the time he resigned the position of trustee  
18 in December 3, 1973.

19 THE COURT: Thank you, Mr. Donoghue.

20 MR. HAROLD: May I ask the same of Mr. Craner,  
21 in the same way.

22 MR. CRANER: Your Honor, I received a letter  
23 from Mr. Harold last week asking me to produce certain  
24 documents that are allegedly in the possession and custody  
25 of Mr. Palatnik.

I called Mr. Harold and informed him that Mr. Palatnik is out of the country and I had no way of, in any way, obtaining the documents if Mr. Palatnik does, in fact, have them, and I advised him that I would be unable to produce the documents as set forth for that reason.

MR. HAROLD: And he did. And, anyway, that the Court wants to dispose of an answer to that at some future time or in writing is, of course, acceptable to me.

THE COURT: We will see.

MR. HAROLD: The plaintiff has no further witnesses to call.

THE COURT: That is your case?

MR. HAROLD: Yes, it is.

THE COURT: Show me how you have proved here that this contract was invalid at the time it was made because of some fraud or overreaching, self-dealing or whatever ground you assert.

MR. HAROLD: Yes, sir.

We would attend to our pleading in this respect, and we respect, and we respectfully submit that we have sustained the allegations of the complaint. It doesn't necessarily answer your question, but we have put body upon the allegations of the complaint.

Now, to answer your question, we like to ask the

2 Court to view this in context. As I said, the punish-  
3 ment doesn't fit the crime. It begins to ask whether a  
4 trustee is acting at arm's length when he employs himself  
5 to this very well paying position. So again, in terms  
6 of a trust responsibility, the harsh rule of Caesar's wife,  
7 the duty owed by a trustee, is so very clear that one  
8 must bend over backwards not to be above --

9 THE COURT: Let me ask you, Mr. Harold, was he  
10 a sole trustee?

11 MR. HAROLD: No, sir.

12 THE COURT: How many were there in the trust?

13 MR. HAROLD: Four, sir.

14 THE COURT: Were the others in any way subservient  
15 or dominated?

16 MR. HAROLD: They are employers, sir, and I have  
17 no particular evidence nor have I intended to produce any,  
18 that their job was threatened or anything like that.

19 THE COURT: Then do you contend that it is  
20 per se wrong for a trustee, who is one of four, to engage  
21 in a business transaction which --

22 MR. HAROLD: I say it is, first, entitled to  
23 severe inquiry for a fund that handles 45 apprentices, that  
24 has been doing nicely by itself for ten years, without any  
25 fund administrator, for a fund trustee, who is then president,



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2 to go down to the lawyer for the fund and direct him how  
3 to draft a five-year contract at foreman's wages for 12  
4 months a year, with a hundred-dollar disbursements, with  
5 all of the emoluments of the fringe benefits, for a fund  
6 which is serviced by the teachers that runs four nights  
7 a week and only runs 144 hours a year, one, yes, very  
8 definitely questions the integrity of a trustee who would  
9 so participate in the creation of that kind of a job for  
10 a five-year tenure for that kind of a small trust that has  
11 been running very, very well by itself to that point.

12 We start with, I trust or believe, a duty in the  
13 Court's mind. Then we look to some of the evidence that  
14 we have produced.

15 One, that he lied at a membership meeting when  
16 he said, "No, I haven't been hired," when, in fact, the  
17 contract was dated.

18 Second, that he told one of the trustees,  
19 Mr. Mims, "If you don't sign, don't worry about it, you  
20 won't be here, I'll get one that does."

21 And then we had the other allegations of two  
22 witnesses, Mr. Whitney and Mr. Haley. that -- forgive me,  
23 maybe only one, Mr. Whitney, who said, when he lost his  
24 pay job, given the impetus to take care of it, "I'll get  
25 mine," in words or substance, and he did get his, and he

1 therefore, in my respectful opinion, or rather, let me  
2 analyze the evidence and conclude that this was an unneces-  
3 sary job created at a very high salary for a full 12-month  
4 period, to administer a fund that didn't need an admin-  
5 istrator, and I say I have created adequate proof because  
6 of the fiduciary relationship under the statute that this  
7 is but a fraud, a way around, money going to an employee  
8 and an officer who loses out, out of the trust funds that  
9 are inviolate for the trust purposes under the statute.  
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11 Now, I don't say that I had a million dollars  
12 worth of proof, but I give you this context as the proof  
13 that I do have, and I do say that, judging a trustee who  
14 hires himself in that context, it is a wrong contract, that  
15 should be voided, that bleeds a 4-cent an hour fund of 45  
16 people over \$400 or more per week for 52 weeks a year, and  
17 that had the quote "doubt" placed upon it by the way he  
18 produced it and compelled people to sign it, yes, I do,  
19 sir.

20 I take your judgment.

21 THE COURT: Is there any other evidence, any  
22 other evidence?

23 MR. SILVERMAN: Your Honor, I am representing  
24 Mr. Rose who, of course, is the prime party here. We  
25 respectfully move before this Court for a judgment dismiss-

ing the action on the grounds that there has been no proof whatsoever of this fraud and duress which is throughout the plaintiffs' complaint.

When your Honor asked the specific question, are there any other witnesses, if the motion is denied, of course, I would have to put Mr. Rose on the stand to, as far as he is concerned, contest these allegations that are made, but I would respectfully submit to the Court that in view of the allegations in this claim, most seriously, counsel was discussing the question of Mr. Albenda, one of the trustees who signed the complaint. He didn't discuss the other management trustee who signed at all, and in this complaint he says, in effect, that Albenda was told if you don't sign it, he was going to have union problems.

Now, that is a real powerful allegation. Of course, there has been no such testimony to that effect.

Then he says in here, it was all fraud, duress and what-have-you, and I have heard no words of fraud or duress. In fact, their own witness, Mr. Mims, came on the stand and said it was the employers' idea that there should be an administrator of this particular fund, and it may very well be that Mr. Rose, having worked on that fund since 1967, may have been the ideal, logical one to take it.



2 I would submit to your Honor that the cogency  
3 of plaintiff's arguments, if any, are bounded in the fact  
4 that he represents the victors in a union election who are  
5 now under the machiavellian principles of politics, to see  
6 that they can do all within their power to secure their re-  
7 election three years hence and to remove any opposition,  
8 and this would be --

9 THE COURT: I am not concerned with that.  
10 I would appreciate your trying to enlighten me on your  
11 legal positions here, and nobody is shedding much light.

12 MR. HAROLD: I neglected to mention one point,  
13 sir, that is relevant, at your pleasure.

14 THE COURT: I can't hear all of you at the same  
15 time.

16 MR. HAROLD: Excuse me.

17 THE COURT: Yes?

18 MR. SILVERMAN: Your Honor asked me a question  
19 and listened to Mr. Harold. May I ask your Honor again  
20 what it was, as to shedding light on this?

21 THE COURT: On your legal position, why this is  
22 inadequate. I don't care about the union politics or lack  
23 of politics.

24 MR. SILVERMAN: I can only state to you that the  
25 testimony which will be given in this case by Mr. Rose is

to the effect that he did not partake of any fraud, duress or improper motive. If your Honor wants that testimony, I will put him on the stand.

THE COURT: Put him on because I think there is sufficient here to go forward.

MR. CRANER: Your Honor, I would also like to state that Mr. Harold keeps saying that Mr. Rose hired himself. I believe that in the pleadings there is a contract which is signed by Mr. Hims, signed by Mr. Palatnik and signed by Mr. Albenda.

THE COURT: That doesn't matter who signed it. You are not seriously contending that, are you?

MR. CRANER: I don't know what the allegation that Mr. Rose hired himself -- I don't know what that means.

THE COURT: He is a trustee and he starts working for the outfit that he is a trustee for. I can't think of a better position of a man hiring himself. The only question is whether he is insulated by truly neutral other trustees; whether this is truly an arm's length transaction or whether it is self-dealing, and I think counsel makes a fair case that it was self-dealing. A trustee with a beneficiary; without giving the beneficiary a chance at it, at all, suddenly they are confronted with a contract

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2 with a trustee with a sweetheart job -- that is the way it  
3 looks to me.

4 MR. CRANER: Certainly on behalf of my client,  
5 Mr. Palatnik, there has been absolutely no testimony that  
6 Mr. Palatnik in any way did anything wrong. In fact, his  
7 name wasn't even mentioned in this proceeding other than  
8 the fact that he signed the contract.

9 MR. SILVERMAN: May I also respectfully point  
10 out to your Honor that the question of a party holding a  
11 joint position as an administrator and a trustee of a  
12 fund is perfectly permissible? It is not specifically  
13 so stated in the Taft-Hartley Act, but I would point out  
14 to your Honor that as of last week, when the two Houses of  
15 Congress passed the Pension Reform Act, they specifically  
16 provided in it, pursuant to the resolution of the House  
17 Labor Committee, that there is no prohibition whatsoever  
18 against an administrator and a trustee being the same  
19 person.

20 I will put Mr. Rose on the stand.

21 Mr. Rose.

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2 W I L L I S C. R O S E , called as a witness in  
3 his own behalf, being first duly sworn, testified as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. SILVERMAN:

7 Q Mr. Rose, there was a period of time when you  
8 held the position of president of the union, is that  
9 correct?

10 A For a period of ten years, yes.

11 Q And you were relieved of that office when?

12 A I believe it was at a March meeting.

13 Q Of 1973?

14 A Right.

15 Q Is that correct? Fine.

16 Now, how long has the union had in effect a  
17 program for training of apprentices?

18 A Prior to our negotiating a contribution to the  
19 Training Fund, we used to operate under the State.

10 20 In other words, the trainees had to go up and use the  
21 facilities in the high school and what-not, but in 1967  
22 we negotiated a Training Fund clause into our bargaining  
23 agreement and, of course, since then we subsequently  
24 increased the contribution to it, and got the fund in a  
25 position it is in today.

2 Q As far as the fund is concerned, it is something  
3 which is contributed to by employers, the amount of the  
4 contribution is based upon the number of hours that iron  
5 workers are employed, is that correct, sir?

6 A That's correct.

7 Q Now, it is a jointly administered fund by union  
8 trustees and management trustees, is that correct?

9 A Yes.

10 Q And has the operation of apprenticeship training  
11 been growing in scope in the union since its formation in  
12 1967?

13 A Yes, it has tremendously.

14 Q In other words, has the number of people being  
15 trained and the type of opportunities being offered  
16 constantly been enlarged?

17 A Yes, plus the fact that there is constantly  
18 changing Federal and State regulations on apprentice train-  
19 ing and therefore you have to administer, to watch it a  
20 lot closer, to see that you are operating within the scope  
21 of the law. I'd say it's expanded greatly over what it  
22 used to be.

23 Q In this particular training, is that carried  
24 out recently under the auspices of any State or Federal  
25 programs?

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A Yes, we are registered with both the State and the Federal.

Q And during your period of time with the trust, since 1967, are there people who are partaking in the training program who receive monetary assistance from both the State and Federal Governments?

A Well, we have had over the years quite a few ex-G.I's. and therefore they draw, you know, subsistence from that.

Q I draw your attention to an agreement which was entered into, signed on May 29, 1973, made effective July 2nd, 1973, which calls for your employment as the administrator of the Trust Fund.

Are you familiar with the agreement?

A Yes, I am.

Q And the agreement was originally prepared and subsequently revised and then signed?

A Yes.

Q Would you tell the Court, please, what were the facts and circumstances which led up to the initial preparation of an agreement with respect to appointing you as administrator of this particular fund?

A Well, we had, I think possibly in some of the minutes back as far as 1970, had discussed and, of course,



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Rose-direct

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at that time there was different employer trustees, you

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know, they change with the times, like everything. We

4

had back in 1970 discussed putting on a full-time co-

5

ordinator, once the fund was large enough to sustain one.

6

I would say it was back as far as 1970.

7

Now, subsequently, as I said, I have operated

8

for ten years as the assistant business agent, which I had

9

appointed myself to back, you know, upon coming into office.

10

We had good times, and it just slowed down here this last

11

year or more and, of course, we had an election coming up.

12

Now, maybe whether some of the men felt it would

13

be beneficial to get me off the road with the election

14

coming up or what, but anyway, they passed a motion on the

15

floor which I accepted, and I was chairing the meeting,

16

and they did it in one meeting, to remove me from the salary

17

job of assistant business agent temporarily until such time

18

as work picked up and the treasury of the local gained.

19

So subsequently following that, at this executive

20

board meeting, after the other members had left, Mr. Mims

21

asked me to hold back, he wanted to talk to me, and it was

22

at that time he said to me, he says, "We have been dis-

23

cussing any way we can get around this."

24

In fact, he wanted me the following Monday to

25

move across the hall into the fund office and become the

1 administrator at that time.

2 Q Was there any --

3 A So subsequently, with that, we did have a trustee  
4 meeting. The employer trustees were in accord. In fact,  
5 Mr. Albenda discussed it with me in March, I believe, in an  
6 apprentice conference. He had discussed it with me at  
7 that time, the position of a full-time coordinator.

8 He had stated to me that he felt or had heard  
9 rumors that Mr. Mims was going to have problems at election  
10 time and if we were short on money in the General Fund,  
11 that if one of us become the administrator, we would still  
12 be in the field, could check jobs and one thing or another,  
13 and relieve the General Fund of the expense of the second  
14 man, and I explained to Mr. Albenda at that time, I didn't  
15 think you could convince Mr. Mims that possibly he should  
16 move over and take that job or change in any way from what  
17 he was doing, and he even offered to have lunch with him  
18 and talk to him. I told him, "I don't think it will go  
19 over."  
20

21 Like, I said, the position of administrator had  
22 been discussed prior to my being removed as assistant  
23 business agent in the local.

24 Q Let me ask you this with respect to your taking  
25 of this particular appointment as the administrator of the

fund:

In order to secure this appointment, did you make any promise or any threat or use any method of coercion against anybody with respect to the obtaining of this job?

A No, I did not.

Q With respect to the particular job, when you began working at it, did you continue to work at this job full time?

A As coordinator?

Q Yes.

A Yes, I did.

Q Did there come a time when you were apprised of the fact that the new party who had been appointed by the union as trustees had indicated that they considered you were no longer to be acting in this job?

A No, not right away. Like I say, to my estimation, harassment started, you know, within three or four weeks after I was in the office. The checkbook got locked up so I couldn't get paid first. It was put in the safe. They removed the secretary from my office. They had the phone changed so I couldn't, you know, I didn't have any interoffice phone then. If I wanted a secretary or somebody to do something, I had to leave the office, go across the hall into the other office, and this I had outlined



1 jks

Rose-direct

63

2 in a letter also to the employer trustees, to advise them  
3 of how I was being harassed but --

4 Q Let me ask you this, Mr. Rose, if you can  
5 effectively divorce yourself from the fact that you are  
6 defendant in this lawsuit, is it your position before  
7 this Court, based upon your position in the union since  
8 1967, that in the year 1973 this fund required a full-time  
9 coordinator?

10 MR. HAROLD: Objection. Conclusion, not a  
11 fact.

12 THE COURT: Sustained.

11 13 Q The position of administrator of this fund, I  
14 believe there has been testimony, is it also your testimony  
15 that that emanated from the management trustees?

16 A Well, as I have stated a little earlier, Mr.  
17 Albenda back in the month of possibly, yeah, March, I  
18 believe it was, at that time, at an apprentice conference,  
19 had approached me on the subject of hiring a full-time co-  
20 ordinator.

21 Q Since 1967, in your capacity as president of the  
22 union and in your other jobs associated with the union, had  
23 you managed to keep in contact and in touch with the progress  
24 of the employees apprentice plans?

25 A Yes, because I was chairman of the joint apprentice

ship committee. In fact, I seen all the paper work was handled, the interviews were held and so on and so forth.

MR. SILVERMAN: Very well.

Thank you, Mr. Rose.

### CROSS EXAMINATION

BY MR. HAROLD:

Q You had been a trustee for how long, sir?

A      A trustee of this fund?

Q Yes.

A Since I became president in 1963 till this past July, approximately ten years.

Q Ten years?

A Yes.

Q And you were also a paid assistant business agent?

A. That's correct.

Q When problems came up concerning the administration of this fund for the ten years prior July 1, what did you do either as trustee or as assistant business agent to see to their resolution?

A I don't think I follow your question.

What did I do to administer the fund?

Q Yes.

A Well, I had to set up the meetings. I had to

1           jks  
2           be there.    I met with the people from both the State and  
3           Federal Government, whatever was required and, of course,  
4           that took me time away from doing the other particular  
5           job.

6           Q       And for ten years you did that?

7           A       That's correct.

8           Q       Now, you did say that you were removed from  
9           the assistant business agent position because business  
10          had fallen off?

11          A       True.

12          Q       Would it be fair to say necessarily, therefore,  
13          that the work for the apprentice program fell off?

14          A       Oh, definitely, and felt it would definitely  
15          be an advantage to go out and scratch for jobs for them,  
16          because they don't have a vote for three years and they  
17          kind of get lost in the shuffle.

18          Q       Is it your testimony, therefore, that the fund  
19          administrator scratches for jobs for these trainees?

20          A       Sir, you have turned away. I couldn't hear what  
21          you said.

22          Q       Is it your testimony that it is the administrator  
23          function to scratch for jobs for these trainees?

24          A       I felt it was one of the functions I should  
25          perform, yes.



1           Q     You do know for years that that is the function  
2 of the business agent?  
3

4           A     Very true, and if I could locate a job that I  
5 felt required an apprentice, then I would report it to the  
6 business agent and see if he couldn't get one hired.

7           Q     You did that as an assistant business agent,  
8 didn't you?

9           A     Sure I did.

10          Q     So then where did the change take place in your  
11 gracious assistance as an assistant business agent to these  
12 trainees that could not have been performed after July 1  
13 just as amiably, just as comfortably by your successor?

14          A     We didn't have an assistant business agent  
15 then.     Mr. Haley only became assistant business agent  
16 two weeks ago, I believe.

17          Q     Let's be a little specific.     I do believe your  
18 attorney will advise you that we asked you to bring any  
19 records, data or day book that you kept in respect to your  
20 activity.

21                     Did you produce that?

22          A     I don't have it with me but I do have --

23           MR. HAROLD:   Counselor, could you explain to me,  
24 why it wasn't produced?

25           MR. SILVERMAN:   Pardon me, Counselor?

1 jks  
2 MR. HAROLD: I have asked him to produce some  
3 records.

4 MR. SILVERMAN: I would submit, your Honor, that  
5 when counsel asks that he produce any records or any day  
6 book of his performance under this fund that we would make  
7 the same objection which your Honor has upheld, that it  
8 does not deal with the fraud and the inducement with  
9 respect to this, and that it is not germane to this inquiry  
10 at all. If your Honor would care --

11 THE COURT: It may be.

12 MR. SILVERMAN: If your Honor cares to hear  
13 his testimony as to what he did every day --

14 THE COURT: I may be.

15 MR. SILVERMAN: -- then I would be glad to bring  
16 it down and ask your Honor to continue the hearing.

17 MR. HAROLD: My question is germane because of  
18 my contention of the very little work necessary and also --

19 THE COURT: I think it is germane. It may be  
20 germane.

21 MR. HAROLD: I also want to get in some evidence  
22 with regard to the telephone --

23 THE COURT: Do you have them with you?

24 MR. SILVERMAN: No, your Honor.

25 THE COURT: We will have to adjourn until such

2 time as he does have them.

3 MR. HAROLD: Yes, sir.

4 THE COURT: Can you go on with something else?  
5 Let's get as much of this out of the way as we can tonight.

6 MR. HAROLD: All right.

7 Q Do you know of the existence of any minutes that  
8 recorded the funds trustees' actions in hiring?

9 A Mr. O'Hara should have a set of minutes some-  
10 where.

11 Q Did you ask him to give them to you?

12 A Because he didn't come up when we had the  
13 meeting. He sent one of his assistants up, and what  
14 minutes that young fellow might have taken, I really  
15 couldn't say at this time.

16 Q When did he --

17 THE COURT: We will have to take a short recess.  
18 I have a problem with my jury again.

19 MR. HAROLD: Shall we adjourn?

20 THE COURT: Let's finish with this witness.

21 How much longer?

22 MR. HAROLD: Not much more except I do want to  
23 interrogate him when he does produce these records. He  
24 says Mr. O'Hara has minutes. Forgive me, but as an  
25 officer of this Court, I have asked Mr. O'Hara for the



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minutes. I have correspondence in which he says he doesn't have any.

THE COURT: You know if you have a hearing and you want minutes there, when I practiced law I used to subpoena them.

MR. HAROLD: I always found a notice to produce on a fellow attorney is all I needed to do.

THE COURT: Well, I used to subpoena them if I wanted to make sure they were there. And if I didn't have them there, I took the consequences, and often that was to leave the Court without what I wanted. But let's continue here for a few minutes.

Q It is your opinion, then, that Mr. O'Hara or one of the assistants in his office made minutes of the meeting at which you were hired by the action of the trustee?

A He should have made minutes definitely.

Q Not should have. Do you know whether he did?

A I could not say positively.

Q Was there a meeting of four trustees held at which there was a vote to hire you as trustee; yes or no?

A Three trustees and the other fellow okayed it over the telephone.

Q Who were the three?

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A It was Mr. Palatnik, Mr. Mims and myself, and Mr. Albenda was contacted by telephone.

Q And when specifically did that meeting take place?

A I would have to figure the date out for you because there was letters sent out for the meeting.

Q Where is that letter?

A I feel I can produce that, your Honor. I am not sure where it is at the moment. I should be in the files in the office. My office got locked up. I couldn't get anything out of there.

MR. HAROLD: We have had a witness say he searched your office and there is no such evidence.

I would call your Honor's attention to Section 6 of Article 7 of the trust instrument which says:

"The trustees may act on any matter which may properly come before them without a meeting, provided that such action is recorded in writing and signed by one union and one employer trustee after written notice to all of the trustees."

I have not been able, nor has anybody been able to tell me the existence of such a written notice.

I am unfamiliar with busy business trustees to use a phone but --





1 jks

2 the Court's direction --

3 THE COURT: I will direct them to produce them,  
4 but I would like to know what I am directing him to  
5 produce.

6 MR. HAROLD: I am asking you to ask this witness  
7 to produce through his counsel any records of his activ-  
8 ities since July 1 for the fund trustee, daybook or other-  
9 wise.

10 I am asking him -- Counselor, if you may forgive  
11 me -- also asking him to produce either the minutes of the  
12 trustee meeting and the date when it was held or the  
13 written notice that is required by the bylaws, by the  
14 trust instrument. That is what I am asking him to  
15 produce. He said he believes Mr. O'Hara has it, and as  
16 an officer of this Court I advise you that I have talked  
17 to Mr. O'Hara who says he doesn't.

18 THE COURT: All right. Cancel that Saturday.  
19 It is too late to get a court reporter. We will resume  
20 3 o'clock Monday afternoon.

21 MR. HAROLD: Yes, sir.

22 Thank you very kindly, sir.

23 THE COURT: I would like at that time to hear  
24 the motion to remand, which no one argued.

25 MR. SILVERMAN: Yes, that is on my motion to

1 jks

2 remand.

3 THE COURT: I would like at that time also to  
4 hear that motion.

5 MR. HAROLD: Excuse me, sir, if you should  
6 decidethat we are right here, the motion for remand would  
7 be academic.

8 THE COURT: I am quite aware of that. I want  
9 to get all the argument out of the way.

10 (Adjourned to Monday, March 11, 1974, at  
11 3.00 o'clock p.m.)

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JOSEPH W. HALEY, et al.,

vs.

74 Civ. 284

ROBERT PALATNIK, et al.

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New York, March 11, 1974;  
3.00 o'clock p.m.  
(Room 1105)

Present:

Mr. Harold

Mr. Craner

Mr. Silverman

--

(Case called.)

THE CLERK: Plaintiffs ready?

MR. HAROLD: Yes, sir.

THE CLERK: Defendants ready?

MR. SILVERMAN: Yes.

MR. CRANER: Yes.

MR. HAROLD: Mr. Rose was on the stand when we  
adjourned, if you please, sir.

THE COURT: Do you want him to return?

MR. HAROLD: Yes, if you please, sir.

--



2 W I L L I S C. R O S E , resumed.

3 THE CLERK: Sir, I remind you you are still  
4 under oath.

5 MR. HAROLD: With the Court's permission and  
6 consent of the parties, rather than wasting it and the  
7 State's time, I have a representative from the State  
8 Insurance Welfare Bureau with two records from the Trust  
9 Welfare Fund I would like to offer in evidence and leave  
10 copies with you.

11 May I have them, please, sir?

12 (Produced.)

13 MR. SILVERMAN: I have no objection, your Honor,  
14 other than materiality, since I don't know what is in them.

15 MR. HAROLD: They show the income for the trust  
16 for the two years '72 and '73.

17 THE COURT: I will take them.

18 You may be excused.

19 MR. HAROLD: May we mark these, then, as exhibits,  
20 and we will let that go?

21 THE COURT: Yes.

22 (Plaintiffs' Exhibits 4 and 5 were received in  
23 evidence.)

24 MR. HAROLD: I would also like to mark as  
25 Exhibit 6 a recapitulation of the matters we discussed --

xx

1 a recapitulation of some phone numbers just for the  
2 simplicity of understanding by the Court.

3 THE COURT: All right.

4 (Plaintiffs' Exhibit 6 was received in  
5 evidence.)

6  
7 CROSS EXAMINATION (Continued)

8 BY MR. HAROLD:

9 Q Sir, when it came to drafting the instrument of  
10 your employment, you did go to the attorney for the fund,  
11 Mr. O'Hara's office, did you not, sir?

12 A Yes, I did.

13 Q And did he then and there draft the instrument  
14 of employment pursuant to your direction?

15 A No, he did not.

16 Q Did you return the same day with a completed  
17 instrument except for some later modifications?

18 A No, I did not.

19 Q What did you show to Mr. Mims when you came back  
20 and asked him to sign?

21 A I didn't show anything to Mr. Mims. A subse-  
22 quent meeting of the trustees was called and an attorney  
23 from Mr. O'Hara's office came up -- I can't remember the  
24 young man's name -- and he brought the instrument up with  
25 him at that time. Mr. Palatnik was present, Mr. Mims

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and myself, Mr. Albenda --  
Q Sir, if you will stop now, I would like to ask  
you another question.  
A I didn't finish answering the one you asked.  
Q I believe you long ago did.  
THE COURT: Let him continue.  
MR. HAROLD: Surely.  
A Mr. Albenda was not there, but he was contacted  
by phone. We had several conversations back and forth.  
There were several conversations back and forth. There  
were several paragraphs in the agreement that he was not  
happy with. He didn't want to go along with. I don't  
remember exactly what they were now, so through subsequent  
phone calls and a phone call back to Mr. O'Hara's office,  
the attorney left with the documents, and when they were re-  
prepared, they were mailed from New York City to Mr. Mims  
at our office in Newburgh.  
MR. HAROLD: I would like to have the instru-  
ment marked as Plaintiffs' Exhibit 7 in evidence, please.  
MR. SILVERMAN: No objection.  
MR. CRANER: No objection.  
(Plaintiffs' Exhibit 7 was received in  
evidence.)  
Q You then gave directions to the attorney for the

xx



fund as to what to put in the instrument that he was to draft?

MR. SILVERMAN: I will object to that, your Honor, "gave directions to the attorney."

THE COURT: I will let him proceed. He is on cross-examination.

Go ahead, answer the question.

THE WITNESS: Would you repeat the question?

(Question read.)

A He asked me some of the things I felt that should be included, yes, we did discuss it.

Q And did you tell him what should be the fee for your service?

A What should be the fee as to my wages and what-not?

Q Yes.

A Yes, I gave him a general outline as to what I thought should be.

Q What did you tell him?

A I should be paid foreman's wages and fringe benefits, the same as any other iron worker and compensation for the use of my car and expenses.

Q When the instrument came back -- and I show you Exhibit 7 in evidence -- would you point out to the Court

1 the specific corrections that were made in the instrument  
2 that was completed, as you say, by the attorney at your  
3 instructions?  
4

5 MR. SILVERMAN: I object, your Honor. Filled  
6 out by the attorney at his instructions -- that is not the  
7 witness' testimony.

8 MR. HAROLD: I respectfully suggest it is.

9 THE COURT: What changes were made in it after  
10 you talked to the lawyer?

11 MR. HAROLD: Thank you, sir.

12 A The changes on this agreement, where they are  
13 initialed, is this what you are referring to?

14 Q Yes, sir, if that is what was made.

15 A Those changes were subsequently made in Mr.  
16 Albenda's office, before he signed it, and the changes were  
17 concurred with by the other two trustees.

18 Q And that would be on page what, so the Court can  
19 see it at its pleasure?

20 A Well, two is on page 2, one on page 3, and that  
21 seems to be it. In fact, these changes were typed into  
22 the original documents on Mr. Albenda's typewriter, in his  
23 office in Poughkeepsie, those last changes.

24 Q Do you know what the sum total of the per week  
25 payment by the Annuity Fund to you amounted to?

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Rose-cross

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A I believe the Annuity Fund at that time was

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49 cents an hour.

4

Q No, by the Annuity Fund -- forgive me, I am

5

wrong. I am misleading.

6

MR. HAROLD: With the Court's permission, strike

7

that.

8

Q Please tell me what the Training and Education

9

Fund paid you for everything, including its contribution,

10

the fringe benefits, et cetera.

11

A They paid me iron workers foreman's wages.

12

Q And what was that, sir.

13

Let me lead and get it over with because it is

14

silly.

15

I will read into the record --

16

THE COURT: It is just arithmetic.

17

MR. HAROLD: No, it has been changed. I will

18

read and ask him if he agrees.

19

Q The foreman's wages was \$365, correct, sir?

20

A That sounds about right.

21

Q \$100 expenses, correct, sir?

22

A 50 for the car, 50 personally, yes.

23

Q 42.40 for the Vacation Fund?

24

A If that is it. It was a dollar something an

25

hour, a dollar three cents an hour, whatever.



2

Q \$18.80 for the Annuity Fund?

3

A Yes, you are probably right.

4

Q And \$24 for the Health Fund?

5

A Yes. It was 60 cents an hour, the contribution.

6

Q 38.40 for the Pension Fund?

7

A Yes.

8

MR. HAROLD: And I assure the Court that comes to \$538.60 a week.

10

Q Sir, as a trustee, when you came to consider the rate of hire of yourself as an employee, did you examine the amount of income of the fund per year?

13

A Had I?

14

Q Yes.

15

A Why, I knew what the total worth of the fund was, yes.

17

Q I didn't ask you that, sir. I asked you if you knew or inquired or searched to determine the annual last income of the fund.

20

A I forget at what date we were getting 8 cents an hour, and when we negotiated our last contract we cut it back to 4 cents an hour and transferred that 4 cents to the men's wages.

24

THE COURT: Please, Mr. Rose, will you listen to the question?

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What was the annual income?

THE WITNESS: I couldn't say.

THE COURT: All right, you don't know.

Q If I read you from Exhibit --

MR. HAROLD: And I can save the Court's time --  
Exhibit 4 illustrates that the annual income for the fiscal  
year ending June 30, 1973 was \$34,406.

Q Would that be about right?

A Yes, probably. If that is the figure you have,  
it's probably right.

THE COURT: If you have it in evidence, why do  
you have to ask the question?

MR. HAROLD: Agreed, sir.

Q You went on the payroll when, sir?

A I believe July 2nd. That was a Monday.

Q When did school open, sir?

A We opened some time in September or early  
October.

MR. HAROLD: Again, I take the Court's  
admonition. It is in evidence.

Q Do you have any knowledge of the income of the  
fund from July 1, '73 forward?

A At this moment I do not.

MR. HAROLD: Forgive me; with a rebuttal

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Rose-redirect

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witness or a stipulation I will take care of that, and  
that is all I want to ask of this witness.

REDIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Rose, when we left Friday, you were directed  
by the Judge to produce here today such records as you  
might have concerning your activities with the fund, is  
that correct?

A Yes, sir.

Q All right. And for the purposes of apprising  
the trustees, did you keep a record in your own handwriting  
of the various work, labor and services performed by you  
for the fund?

A For the most part I did in longhand. In case  
at a trustees' meeting I was questioned on any of the  
aspects of my work, why, I would have a ready reference for  
myself, yes.

Q Are these the more or less ready records that  
you kept?

A Yes, they are.

MR. SILVERMAN: I would like to offer them, your  
Honor, rather than read them at length. It is a day-by-  
day diary.

MR. HAROLD: Excuse me, sir.



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(Pause.)

MR. HAROLD: How can I expedite the Court's time, to give intelligent attention to this in the little time the Court very understandably wishes me to take?

THE COURT: Why don't I take them subject to a motion to strike? Will that solve your problem?

MR. HAROLD: Yes, except that my real problem is as to an examination --

THE COURT: You want to cross-examine about them?

MR. HAROLD: I honestly may be wasting the Court's time.

THE COURT: Go ahead, take your time.

We have a procedure in the Federal Court known as taking peoples depositions, and it is awfully nice if lawyers do it before they come here.

Let me know when you are ready to proceed.

(Recess.)

(Defendants' Exhibit A was marked for identification.)

THE COURT: All right, Mr. Harold.

MR. HAROLD: I will have no cross-examination concerning that exhibit. I will ask a few more questions.

-

## 2 RECROSS EXAMINATION

3 BY MR. HAROLD:

4 Q Sir, I asked you to produce the minutes of the  
5 trustees' meeting at which any action was taken by a vote  
6 of the trustees concerning hiring you. Have you produced  
7 same?

8 A No, I do not have that.

9 Q Did you look for it?

10 A Yes, I did, amongst the material I had. I have  
11 no access to the office since the end of November, so if  
12 there is any there, I don't have it.

13 Q And you don't have them yourself?

14 A No.

15 Q Did you ever see or hear of any letter written  
16 to any of the trustees informing them of a meeting at which  
17 the consideration of your hire would take place?

18 A Possibly it was done by telephone.

19 MR. HAROLD: I have no further questions with  
20 this witness.

21 MR. SILVERMAN: I have just one, your Honor.

## 22 REDIRECT EXAMINATION

XX

23 BY MR. SILVERMAN:

24 Q Mr. Rose, did you in any manner threaten, coerce,  
25 intimidate or use any improper motive with respect to the

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agreement which was entered into between you and the  
trustees?

A No, I did not.

MR. SILVERMAN: No further questions.

MR. HAROLD: I have no further questions of this  
witness.

THE COURT: You are excused.

(Witness excused.)

MR. HAROLD: I would like, with the Court's  
permission and counsel's, to enter as Exhibit 8 a statement  
of the receipts of the fund for the first six months of  
1973.

MR. SILVERMAN: Just tell me the amount.

MR. HAROLD: \$12,796.98.

THE COURT: Received.

(Plaintiffs' Exhibit 8 was received in  
evidence.)

xx MR. HAROLD: I forgot to ask one question of  
the witness. If he will stay there, I will ask it.

THE COURT: All right.

FURTHER EXAMINATION OF WILLIS C. ROSE

BY MR. HAROLD:

Q Sir, will you tell the Court why the contribution  
of from 8 cents to 4 cents happened?



2 A Yes. We were negotiating a new contract and  
3 we felt that there was sufficient reserves in the Training  
4 Fund to carry it for several years with only half that  
5 amount of contribution, and we felt it was beneficial,  
6 where we had lost several wage increments, with the Wage  
7 Stabilization Committee, and therefore we attempted to move  
8 the 4 cents into wages and benefit the rest of the member-  
9 ship.

10 Q And the contribution of 8 cents was cut back  
11 to 4?

12 A Right, and the 4 cents that was chopped off was  
13 moved into wages for the rest of the membership.

14 MR. HAROLD: Thank you, sir.

15 I have no further questions.

16 I have no rebuttal witnesses.

3 17 MR. SILVERMAN: If we are now on a rebuttal  
18 witness, your Honor, may the record indicate that as far as  
19 Mr. Rose individually charged in this lawsuit is concerned  
20 we rest.

21 We renew the motions which were made at the  
22 conclusion of the plaintiffs' case and now move on all of  
23 the evidence for dismissal.

24 MR. HAROLD: May I be heard very --

25 THE COURT: Just a moment. Let me hear all

2 the other defense lawyers first.

3 MR. CRANER: I would join in that motion on  
4 behalf of the defendant Robert Palatnik.

5 THE COURT: All right.

6 MR. HAROLD: In opposition, and in furtherance  
7 of the few remarks I made the other day, I would make further  
8 reference to the case of Blankenship v. Boyle, the mine  
9 workers trust instrument that helps the Court, if need  
10 be --

11 THE COURT: Does it have a citation?

12 MR. HAROLD: Yes, I do, and let me hand a copy  
13 to the Court, sir, (handing).

14 THE COURT: I just want the record to show what  
15 the citation is, Counsel.

16 MR. HAROLD: Forgive me. I was about to hand  
17 it to you for a reason, sir.

18 THE COURT: I want it in the record so that when  
19 I read the record I can go to the case. I have a library.  
20 I don't intend to read it now.

21 MR. HAROLD: Citation, sir, is 329 Fed. Supp.  
22 1089 (1971).

23 THE COURT: What court?

24 MR. HAROLD: The District Court of the District  
25 of Columbia, April 28, 1971, the mine workers --

2 THE COURT: Thank you.

3 MR. HAROLD: The reason that I call it to the  
4 Court's attention, in terms of my present argument is that  
5 it helps the Court, if need be, understand the fiduciary  
6 obligation to maximize trust income by proving investment  
7 burden was on the trustees, and they must justify their  
8 conduct.

9 It makes clear that the burden of a fiduciary  
10 action is upon the trustees, that they must be aware of  
11 their responsibility.

12 This was the case where the mine workers took  
13 trust money and put it into a bank owned by the Mine  
14 Workers Union, and the question was, well, who is going  
15 to explain that maybe we make good judgment and maybe we  
16 were conserving our assets, and maybe we would have lost  
17 them if we had put them in some place else that would have  
18 paid a higher interest.

19 The District Court said there, "Wait a second.  
20 You are dealing with your brother, and you have to be  
21 looked at by the Court in that light, and we are going to  
22 see whether you exercise extraordinarily carefully your  
23 fiduciary relation, and it is upon you, sir, because of  
24 this relation, to come forward and explain that you did."

25 And as you know, this case found in many



respects that they did not.

The same case, from its sub-notes and references:

"It will be subject to closes scrutiny for signs of self-dealing" is another point of the case.

Now, I put that in context here, too, because a depreciation of the fund is of absolute concern to a trustee, and here we have a fund that made 34,000 gross income in 1973 because as witnesses have said, there was a falling off of work, it only made 12,000-plus in the first six months of 73, so you are going to run under 30,000. You are probably going to run 25,000 gross income, gross income for the fund, and here is a man, as a trustee, hiring himself at \$30,607 per year, more than the probable income for the incoming year, and \$4000 more -- less than the then-income and, as you admonished me correctly, it is all in the record.

Here they ran the fund for \$7500 worth of disbursements for the teachers, for the secretarial help, and for other administrative costs.

Now, I also have to read to the Court, but just briefly to refer to it, the Department of Insurance of the State of New York Welfare Fund Bureau tells us what is a fair administrative cost to charge for these trust funds. I have had occasion for other reasons to study it. It

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depends on where they are -- it is a variable; there is no absolute. If you are running a welfare fund for a factory with 7000 workers, it will run about 4 or 5 per cent. If you are running a master mates and pilots, deck officers fund, that I have some familiarity with, where you have to go all over the country, the world, to make this fund run right, you will go up to 14 per cent for administrative costs. But the funds are for the benefit of the beneficiaries, and the Welfare Department of the Insurance Department watches to see that this is not abused, and here you have a trustee -- forgive me my colloquial -- with the gall to hire himself as an administrator with \$4000 less than the total income, and if you take 7500, as necessary to run the fund the way it was running, for about \$5000 or \$6000 more than would be in the annual fund, if you kept hiring of the teachers, and then if I'm right in my anticipation, and they said work was falling off, so you are going to have \$25,000 or less in the current fiscal year, 12 times 12, and you are going to spend 7500 of that for teachers and incidental expenses, so you are talking about \$18,000 net and --

THE COURT: Sir, as I understood it, we had a motion to dismiss. I deny your motion.

Is there any rebuttal evidence here, any defense?

2 MR. CRANER: No, sir.

3 THE COURT: Do you all rest?

4 MR. SILVERMAN: Yes.

5 MR. CRANER: Defendant Palatnik rests.

6 THE COURT: You rest?

7 MR. CRANER: Yes.

8 MR. SILVERMAN: Yes.

9 MR. HAROLD: I rest.

10 THE COURT: I didn't mean to cut you off.

11 I just wanted to button the case up procedurally.

12 MR. HAROLD: Forgive me, sir.

13 I am just simply saying that if you will look  
14 at whether the trustee violated his fiduciary relation --  
15 and I am not going to repeat what I said at the end of  
16 the plaintiffs' case; it would be repetitious; you are  
17 going to study the record -- I am just acceting what was  
18 brought out this afternoon, that you are denuding -- I am  
19 repeating myself -- that you are running away the rest of  
20 the money, and this strikes to the heart of the breach of  
21 the fiduciary responsibility which this mine workers case  
22 struck so hard at.

23 Thank you very much.

4 24 THE COURT: All right.

25 MR. SILVERMAN: Your Honor mentioned Friday,



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2 when we left, that we should be prepared to address our-  
3 selves to the application which is pending before you.

4 THE COURT: Yes.

5 First of all I want to see what is left here and  
6 what isn't. This record is something of a mess, to put  
7 it mildly.

8 What about 73 Civil 5152, action for appointment  
9 of an arbitrator? Is that still alive or dead?

10 MR. HAROLD: That is still alive, depending  
11 upon your Honor's action. If your Honor would void this  
12 instrument, everything else would fall.

13 MR. CRANER: Your Honor, there is also pending  
14 a motion to stay that arbitration.

15 THE COURT: I understand. I am trying to clean  
16 up what is up and what is down here.

17 MR. CRANER: Yes, sir.

18 THE COURT: There is an action to enjoin defendan  
19 from continuing refusal to perform duties as a trustee.

20 MR. HAROLD: Yes, sir, and that is 74--

21 THE COURT: And to appoint interim trustees.

22 MR. HAROLD: Yes, sir.

23 THE COURT: Is that still alive?

24 MR. HAROLD: Yes, sir. Well, no, sir, that is  
25 not, sir.

1  
2 THE COURT: Do you stipulate to discontinue  
3 that action?

4 MR. HAROLD: I will, sir.

5 THE COURT: Do you so stipulate?

6 MR. CRANER: Yes.

7 MR. SILVERMAN: Yes.

8 THE COURT: All right, action dismissed on  
9 stipulation.

10 MR. HAROLD: May I put on the record --

11 THE COURT: Just a minute, please, Mr. Harold.  
12 Will you just be quiet a moment? Let me get this thing  
13 straightened out, then I will hear you ad nauseam.

14 Now, there is a case from Rose's contract case,  
15 an action on a contract, which was removed from the State  
16 Court.

17 MR. SILVERMAN: That's correct, your Honor.

18 THE COURT: That is alive and there is a motion  
19 pending to remand it, right?

20 MR. SILVERMAN: That's right.

21 THE COURT: I am going to hear that today.

22 I don't even have on my docket list of cases  
23 here a motion to stay the arbitration. Where is that  
24 case?

25 THE CLERK: That is on 5152.

THE COURT: Let me hear that motion to stay this arbitration. You say it is alive, this case.

MR. CRANER: That is Mr. Harold's motion.

MR. HAROLD: Yes, sir.

THE COURT: All right.

MR. HAROLD: The arbitration came out of a petition by the attorney for all four trustees that rose out of a claim on whether or not under the contract of employment they could discharge Mr. Rose and there was a clause in the contract that he could be discharged for malfeasance, misconduct and so on, and there was also, under the trust agreement, the Federal Court as the person to appoint an arbitrator, and initially that -- what started this matter in being.

Now, I have made a motion to stay that arbitration pending the outcome of the litigation which has been heard by the Court in this hearing, which would void the instrument of employment, my argument being that if the Court should see fit to void the instrument of employment, we need no arbitration.

THE COURT: I see. All right, I will reserve on that, pending what I do with the action for declaratory judgment. It will fall with it one way or the other.

All right, now, let's hear the motion to remand.



3 MR. SILVERMAN: Your Honor, Mr. Rose commenced  
4 an action in the Supreme Court, Rockland County, where he  
5 is a resident, pleading the contract, saying that he had  
6 been unduly or wrongfully discharged, if that is the correct  
7 term, and his salary had not been paid up to that time for,  
8 I think, about two or three weeks, and we had commenced  
9 the action, claiming damages for the two or three weeks  
10 salary and pleaded to the Court that during the time that  
11 the lawsuit was pending in the courts, unless some resolu-  
12 tion were made, he would have an additional salary, until  
13 such time as the matter was resolved.

14 An answer was submitted in that case and then  
15 it was subject to a motion to remove -- it was subject to  
16 removal to the United States District Court by Mr. Hatold  
17 on the ground that it was an integral part of the proceed-  
18 ings, the major portion of which your Honor has heard so  
19 far.

20 It is an action, very simply, based on the  
21 contract which is before the Court. I would submit to  
22 the Court that if the Court should take the position in  
23 this lawsuit that we advance that there was no fraud or,  
24 duress, then the contract action by Mr. Rose should be  
25 returned to the Supreme Court for a determination there  
as to the issues he raises.

2 THE COURT: Regardless of what position I take,  
3 how does it get over here? Isn't it just an employment  
4 contract?

5 MR. SILVERMAN: There was a petition for  
6 removal filed in the United States District Court. It is  
7 automatically removed. We made a motion to reenter --

8 THE COURT: Did you remove it?

9 MR. HAROLD: Yes.

10 THE COURT: Where is the jurisdiction in this  
11 court for a simple breach of employment contract?

12 MR. HAROLD: Involving a Federal trust.  
13 I will concede the concedable right away. The Courts  
14 have held that actions under a Federal Taft-Hartley trust  
15 may and do --

16 THE COURT: Suppose they fired the janitor of  
17 this trust?

18 MR. HAROLD: I am stating the concedable, but  
19 then I am going on to the next step.

20 THE COURT: You have got to get over the first  
21 hurdle first. You mean to tell me that every action  
22 against a Federal employee, a trust, every breach of  
23 contract involving a trust is in the Federal Court?

24 MR. HAROLD: No, the cases don't state it.  
25 I concede the concedable. The cases in the Federal Court

1 say it is a State Court action except, and I was about  
2 to say the exceptions. The exceptions are my affirm-  
3 ative defenses that deal with the trustee hiring himself,  
4 overreaching, bad faith, all of which are affirmative  
5 defenses which gives this the connotation of a Federal  
6 gut action under 29 U. S. Code, Section 186.  
7

8 THE COURT: You have got to judge the removabil-  
9 ity of an action by the complaint, not by the defenses.

10 MR. HAROLD: Again, I also say that the  
11 defendant has said -- he doesn't need to be held to it  
12 now; the plaintiff in that case -- that should your Honor  
13 determine that this motion to void the contract is not  
14 sustainable, that we have an arbitrator, and he has said  
15 he would concede that the rights of Mr. Rose would be  
16 determined by the arbitrator, because I don't want two  
17 forums. I don't want the State Court action where he  
18 sues and the arbitration tribunal that passes judgment on  
19 his discharge.

5 20 THE COURT: I don't see how I get to it at all.  
21 I can't take it if I lack jurisdiction. I just don't see  
22 your argument that I have jurisdiction here at all, but I  
23 will reserve decision on it.

24 Submit a brief.

25 MR. HAROLD: In any event, would you stay your



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2 decision until you make your decision in this case which  
3 may clear up everything?

4 THE COURT: All right.

5 MR. SILVERMAN: I have no objection to that,  
6 your Honor.

7 MR. HAROLD: I have a brief here which I would  
8 like to file.

9 THE COURT: I want briefs on this, and I want  
10 the record on this hearing, and you will have to order that  
11 from the court reporter.

12 MR. HAROLD: It has been done.

13 MR. SILVERMAN: It has been done, your Honor.

14 THE COURT: What about your briefs?

15 I want a timetable with it. I want it keyed  
16 to this record.

17 MR. HAROLD: I would be pleased to do that,  
18 particularly in light of --

19 THE COURT: I want briefs based on this record  
20 that we have made now.

21 MR. SILVERMAN: If your Honor would say within  
22 one week after we receive the record?

23 (Discussion off the record.)

24 THE COURT: The plaintiff here, Mr. Harold,  
25 should serve his briefs on the defendants, and you reply

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2 to them.

3 How long will it take you after you get the  
4 record?

5 MR. HAROLD: One week, if you give me the  
6 Monday after the receipt of the record; I like to work  
7 weekends if I get stuck.

8 THE COURT: Let's give you a definite date and  
9 then I can keep track of it. Suppose you serve your brief  
10 by the 22nd of March on the defendants, and how long do you  
11 need to reply?

12 MR. SILVERMAN: A week, your Honor. Will a  
13 week be too much, your Honor?

14 THE COURT: No. The 29th?

15 MR. SILVERMAN: Very well, your Honor.

16 THE COURT: The 29th, reply, and I will not want  
17 a rebuttal brief unless I ask for it.

18 MR. HAROLD: Yes, sir.

19 THE COURT: And I would like them to be brief,  
20 to the point, and I want also proposed findings from each  
21 side, proposed findings of fact, conclusions of law.

22 All right?

23 MR. HAROLD: Thank you, sir.

24 MR. SILVERMAN: Thank you, sir.

25 MR. HAROLD: May the Court clerk note, with your

1 jks

2 permission, I am taking this exhibit to photostat and  
3 return to counsel?

4 THE COURT: All right.

5 THE CLERK: You can have all the exhibits  
6 if you will just return them to us when you send in your  
7 brief.

8 MR. HAROLD: I would rather; it makes sense.

9 THE COURT: All right.

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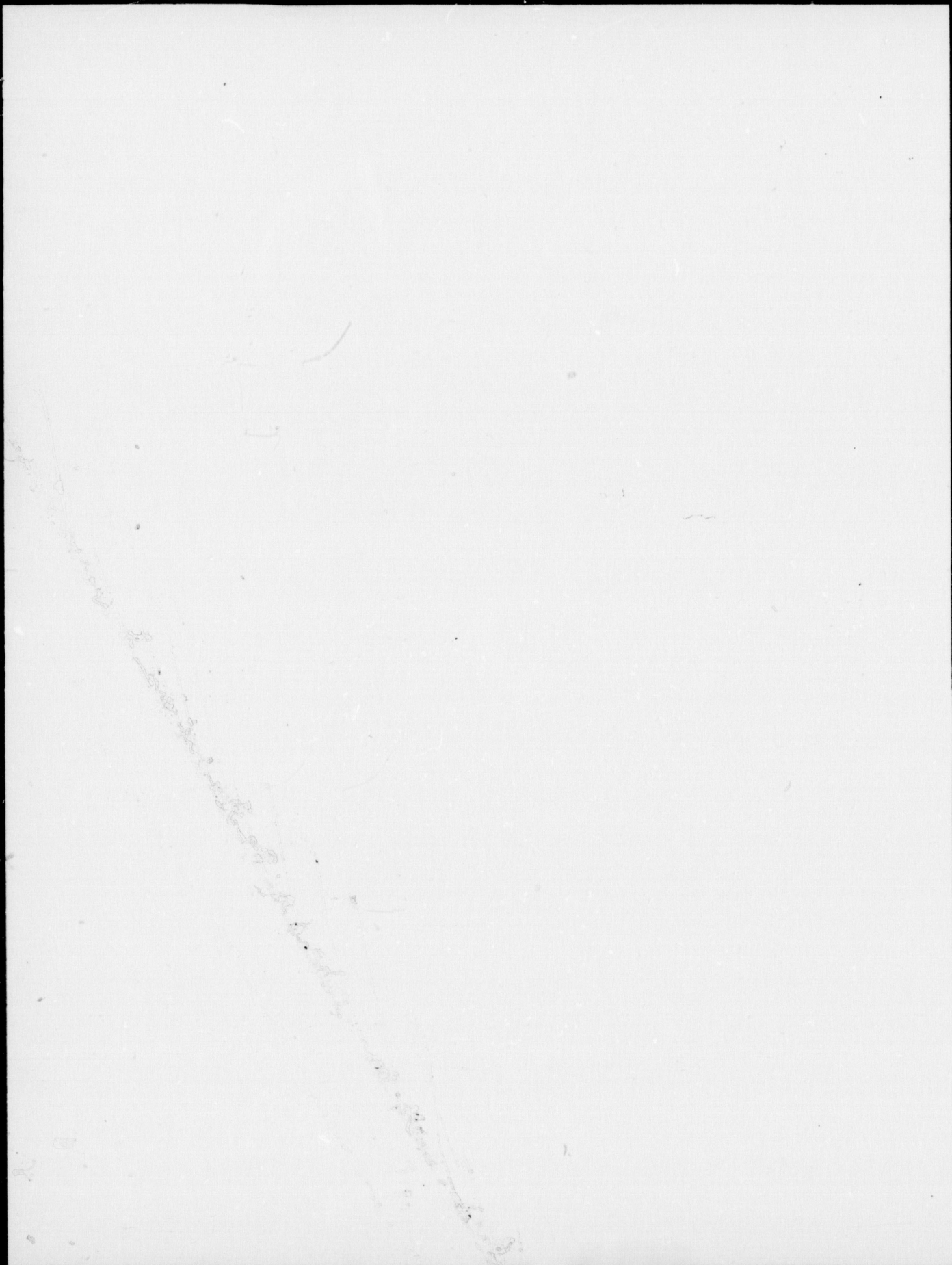


## WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Robert L. Gebo	3			
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Joseph W. Haley	17	26	31	
Henry Whitney	31	33		
William P. Mims	35	45		
Floyd A. Marks	45			
Willis C. Rose	57	64	83 85	85

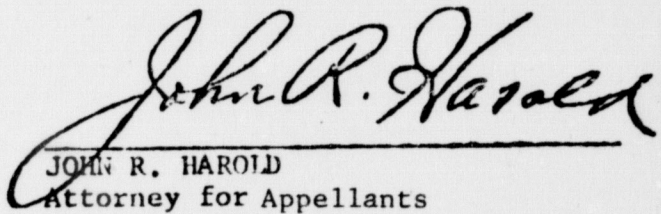
## EXHIBIT INDEX

<u>Union Trustees</u>	<u>Identification</u>	<u>In Evidence</u>
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CERTIFICATION

JOHN R. HAROLD, an attorney duly admitted to practice before the Southern District of New York, hereby certifies that all the papers herein constituting the record on appeal have been compared with the originals and are true copies thereof.

  
JOHN R. HAROLD  
Attorney for Appellants

Dated: New York, New York  
September 30, 1974